No. 99-137

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

In The

Supreme Court of the United States

J. WAYNE GARNER, former Chairman of the State Board of Pardons and Paroles of the State of Georgia, JAMES T. MORRIS, former Chairman of the State Board of Pardons and Paroles of the State of Georgia, GARFIELD HAMMONDS, JR., former Chairman of the State Board of Pardons and Paroles of the State of Georgia, BOBBY K. WHITWORTH, Member of the State Board of Pardons and Paroles of the State of Georgia, and TIMOTHY E. JONES, former Member of the State Board of Pardons and Paroles of the State of Georgia,

Petitioners,

v.

ROBERT L. JONES,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

JOINT APPENDIX

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JOINT APPENDIX
TABLE OF CONTENTS

- Docket Entries: *Jones v. Garner, et al.*, No. 95-CV-3012 (N.D. Ga) 1
- Complaint (R1)[1], filed November 15, 1995 16
- Answer (R16), filed May 15, 1997 29
- Defendants' Motion for Summary Judgment with Brief in Support (R18), filed May 27, 1997 34
- Plaintiff's Brief in Support of Motion for Summary Judgment (R19), filed May 29, 1997 58
- Defendants' Response to Plaintiff's Motion for Summary Judgment (R21), filed June 13, 1997 71
- Plaintiff's Response to Defendants' Motion for Summary Judgment (R26), filed July 10, 1997 79
- Order of the United States District Court granting Defendant's Motion for Summary Judgment and denying all other outstanding motions as moot (R34), filed August 25, 1997 ..... Pet. App. 20a
- Decision of the United States Court of Appeals for the Eleventh Circuit, Case No. 97-9009, reversing the district court's grant of Defendants' Motion for Summary Judgment on Plaintiff's ex post facto claim, filed January 6, 1999 ..... Pet. App. 1a
- Order of the United States Court of Appeals for the Eleventh Circuit denying Defendants' Petition for Rehearing and Suggestion of Rehearing En Banc, filed April 19, 1999 ..... Pet. App. 30a
- Rule 475-3-.05 of the State of Georgia Board of Pardons and Paroles, revised December 1, 1979 ... 116
- Rule 475-3-.05 of the State of Georgia Board of Pardons and Paroles, revised April 10, 1995 118

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[1] References to the District Court record docket entries are denoted as (R#).

Docket Entries

U.S. District Court

U.S. District Court for the
Northern District of Georgia (Atlanta)

11/21/95	1	COMPLAINT, with request to proceed in forma pauperis with ORDER by Mag Judge Richard H. Deane, Jr. GRANTING request. Service of process shall not issue at present time. (File forwarded to staff law clerk.) cc (jaw) [Entry date 11/28/95]
11/21/95	2	ORDER to proceed in forma pauperis by Mag Judge Richard H. Deane, Jr. cc (jaw) [Entry date 11/28/95]
12/26/95	3	ORDER dismissing complaint [1-1] pursuant to 28 U.S.C. 1915(d) by Judge Charles A. Moye, Jr. cc (jaw) [Entry date 12/29/95]
12/26/95	4	JUDGMENT ENTERED on in forma pauperis complaint [1-1] for dft against pla DISMISSING action pursuant to 28 USC 1915(d). cc (jaw) [Entry date 12/29/95]
1/12/96	5	NOTICE OF APPEAL from judgment [4-1], order dismissing complaint [1-1] pursuant to 28 U.S.C. 1915(d) [3-1], [3-2] by pla. FILING FEE $ NOT PAID (jaw) [Entry date 01/18/96]
1/18/96	–	SUBMITTED on notice of appeal for in forma pauperis determination [5-1] to Judge Charles A. Moye, Jr. (jaw) [Entry date 01/18/96]
1/18/96	–	Notice of appeal, certified copy of order 12/26/95, judgment of 12/26/95 and certified copy of docket to U.S. Court of

		Appeals RE: by Robert L. Jones for Court of Appeals appeal [5-1]. (jaw) [Entry date 01/18/96]
1/19/96	6	ORDER GRANTING pla's motion to appeal in forma pauperis [5-1], certificate of probable cause is DENIED by Judge Charles A. Moye, Jr. cc/cert cc to USCA (jaw) [Entry date 01/23/96] [Edit date 01/23/96]
1/31/96	–	Acknowledgment by Court of Appeals regarding appeal. USCA dkt no. 96-8078. (rag) [Entry date 02/01/96]
2/13/96	–	Request for Certificate of Readiness from Court of Appeals regarding appeal. USCA 96-8078. (rag) [Entry date 02/14/96]
2/14/96	–	CERTIFICATE OF READINESS OF RECORD ON APPEAL with certified copy of docket mailed to USCA. (1 Vol. of pleadings). USCA 96-8078. (rag)
2/23/96	–	USCA ack. receipt of COR. USCA 96-8078. (rag) [Entry date 02/26/96]
3/1/96	–	Request from USCA for Original Papers. Original papers mailed to USCA. (1 vol. of pleadings.) USCA 96-8078. (fbh) [Entry date 03/01/96]
3/11/96	–	USCA ack. receipt of original papers. USCA 96-8078. (rag) [Entry date 03/13/96] APPEAL
4/17/96	7	Certified copy of ORDER of the U.S. Court of Appeals DENYING appeal order [7-1] cc (jaw) [Entry date 04/25/96]

12/16/96	8	MOTION by plaintiff for appointment of counsel with brief in support. (jaw) [Entry date 01/07/97]
12/16/96	9	MOTION by plaintiff for evidentiary hearing. (jaw) [Entry date 01/07/97]
12/16/96	10	MOTION by plaintiff for leave to file discovery. (jaw) [Entry date 01/07/97]
12/26/96	11	Certified copy of JUDGMENT OF USCA AFFIRMING IN PART AND REVERSED IN PART judgment of this court. appeal USCA dkt. # 96-8078 (jaw) [Entry date 01/14/97]
12/26/96	11	Certified copy of JUDGMENT OF USCA REMANDED to the District Court for further action. judgment of this court. appeal USCA dkt. # 96-8078 (jaw) [Entry date 01/14/97]
1/8/97	–	SUBMITTED to Judge Charles A. Moye Jr. on [8-1] motion for appointment of counsel, [9-1] motion for evidentiary hearing, [10-1] motion for leave to file discovery (jaw) [Entry date 01/08/97]
1/14/97	–	SUBMITTED to Judge Charles A. Moye Jr. on [11-1] appeal judgment (jaw) [Entry date 01/14/97]
2/11/97	12	ORDER by Judge Charles A. Moye Jr., to reopen case and forward to Mag Judge Richard H. Deane, Jr. for further proceedings consistent with the opinion of the USCA for the 11th circuit, (cc) (jaw) [Entry date 02/13/97]
2/11/97	–	CASE REFERRED to Mag Judge Richard H. Deane Jr. (Calendar sheets forwarded) (jaw) [Entry date 02/13/97]

2/13/97	–	SUBMITTED to Mag. Judge Richard H. Deane Jr. on [8-1] motion for appointment of counsel, [9-1] motion for evidentiary hearing. [10-1] motion for leave to file discovery (jaw) [Entry date 02/13/97]
2/27/97	13	ORDER by Mag Judge Richard H. Deane Jr. ALLOWING CASE to proceed as any civil action and DIRECTING plaintiff to complete service forms and return to clerk within 30 days so that process may be served upon the dfts' by the U.S. Marshal Service (cc) (jaw) [Entry date 03/05/97]
3/12/97	14	Notice of request for 3 summons forms and 5 USM 285 marshalls forms by plaintiff. Mailed to pla this date (jaw) [Entry date 03/18/97] APPEAL
3/15/97	–	SUBMITTED to Judge Charles A. Moye Jr. on [8-1] motion for appointment of counsel, [9-1] motion for evidentiary hearing, [10-1] motion for leave to file discovery (jaw) [Entry date 03/15/97]
3/18/97	–	Rec'd one completed USM-285 form and 3 summons from pla. Mailed pla additional marshals forms and summons. Placed summons for James T. Morris & Timothy E. Jones in file pending receipt of completed USM-285 to be forwarded to U.S. Marshals for service (jaw) [Entry date 03/31/97]
3/18/97	–	Summons issued and USM285 prepared for service upon defendant J. Wayne Garner. Forwarded to USM with service copy of complaint, consent form to proceed

		before magistrate, and pretrial instructions. (jaw) [Entry date 03/31/97]
3/28/97	–	Rec'd completed usm285 marshals forms and summons from pla (jaw) [Entry date 04/07/97]
4/3/97	–	Completed referral to Mag Judge Richard H. Deane Jr. per David Powell, Law Clerk for RHD (jaw) [Entry date 04/03/97] [Edit date 04/03/97]
4/7/97	–	Summons issued and USM285 prepared for service upon James T. Morris, Timothy E. Jones, Garfield Hammonds, Jr., Bobby K. Whitworth, J. Wayne Garner. Forwarded to USM with service copy of complaint, consent form to proceed before magistrate, and pretrial instructions. (jaw) [Entry date 04/07/97]
4/16/97	–	File forwarded to staff law clerk: RHD (jaw) [Entry date 04/16/97]
4/18/97	15	Return of service executed 4/15/97 as to J. Wayne Garner, James T. Morris, Garfield Hammonds, Jr., Bobby K. Whitworth, Timothy E. Jones By serving Diane Avery on original complaint (jaw) [Entry date 04/22/97]
5/15/97	–	SUBMITTED to Judge Charles A. Moye Jr. on [8-1] motion for appointment of counsel, [9-1] motion for evidentiary hearing, [10-1] motion for leave to file discovery (jaw) [Entry date 05/15/97]
5/15/97	16	ANSWER by defendant to complaint Discovery ends 10/12/97 (jaw) [Entry date 05/20/97]

5/20/97	17	ORDER by Judge Charles A. Moye Jr. DENYING [8-1] motion for appointment of counsel, DENYING [9-1] motion for evidentiary hearing, DENYING [10-1] motion for leave to file discovery by Robert L. (c/pla & c/to RHD) (jaw) [Entry date 05/22/97] APPEAL
5/27/97	18	MOTION by defendants for summary judgment with brief in support. (jaw) [Entry date 06/04/97]
5/28/97	19	MOTION by plaintiff for summary judgment with brief in support. (jaw) [Entry date 06/04/97] [Edit date 06/04/97]
6/4/97	–	Notice of [18-1] motion for summary judgment by J. Wayne Garner filed 5/27/97 mailed 6/4/97. (jaw) [Entry date 06/04/97]
6/4/97	–	Notice of [19-1] motion for summary judgment by Robert L. Jones filed 5/29/97 mailed 6/4/97. (jaw) [Entry date 06/04/97]
6/11/97	20	Response by plaintiff to [18-1] notice to respond to motion for summary judgment (jaw) [Entry date 06/26/97]
6/13/97	21	Response by defendant to [19-1] motion for summary judgment (jaw) [Entry date 06/26/97]
6/24/97	22	Unilateral Certificate of interested persons. Dft Only (to judge) (jaw) [Entry date 06/26/97]
6/26/97	–	Terminated submissions. (jaw) [Entry date 06/26/97]

6/26/97	–	SUBMITTED to Judge Charles A. Moye Jr. on [18-1] motion for summary judgment, [19-1] motion for summary judgment (jaw) [Entry date 06/26/97]
7/1/97	23	ANSWERS TO MANDATORY DISCLOSURES by defendant (jaw) [Entry date 07/09/97]
7/8/97	24	MOTION by defendants to compel answers to mandatory interrogs with brief in support. (jaw) [Entry date 07/11/97]
7/10/97	25	TRAVERSE by plaintiff to [16-1] dfts' answer (jaw) [Entry date 07/21/97] [Edit date 07/21/97]
7/10/97	26	Response by plaintiff to [18-1] motion for summary judgment (jaw) [Entry date 07/21/97]
7/10/97	27	MOTION by plaintiff for an order allowing that he be provided with copies of all documents filed with this court. (jaw) [Entry date 07/21/97]
7/17/97	28	TRAVERSE by plaintiff to [23-1] answer interrogatory(s) (jaw) [Entry date 07/28/97]
7/17/97	29	Unilateral Preliminary Statement and Scheduling Order. Dft Only (to judge) (jaw) [Entry date 07/28/97]
8/1/97	30	TRAVERSE by plaintiff Robert L. Jones to [29-1] Unilateral preliminary statement & scheduling order (jaw) APPEAL [Entry date 08/11/97]
8/1/97	31	MOTION by plaintiff for appointment of counsel (jaw) [Entry date 08/11/97]

8/1/97	–	Case administratively reopened. See order of 2/11/97. (jaw) [Entry date 08/26/97]
8/4/97	–	SUBMITTED to Judge Charles A. Moye Jr. on [24-1] motion to compel answers to mandatory interrogs, [27-1] motion for an order allowing that he be provided with copies of all documents filed with this court (jaw) [Entry date 08/04/97]
8/21/97	–	SUBMITTED to Judge Charles A. Moye Jr. on [31-1] motion for appointment of counsel (you have file) (jaw) [Entry date 08/21/97]
8/21/97	32	Reply by defendants in support of [18-1] motion for summary judgment (jaw) [Entry date 08/26/97]
8/25/97	33	ORDER by Judge Charles A. Moye Jr. GRANTING [18-1] dfts' motion for sum.jgm., denying [19-1] pla's motion for sum.jgm., denying as moot [24-1] motion to compel, [27-1] motion for an order, motion for appt. of cnsl. Clerk directed to enter judgment in favor of dfts' and close case (cc) (jaw) [Entry date 08/26/97] [Edit date 08/26/97]
8/25/97	34	JUDGMENT ENTERED for defendants against plaintiff (jaw) [Entry date 08/26/97]
8/25/97	–	Case terminated. (jaw) [Entry date 08/26/97]
8/26/97	35	Response by defendant to [31-1] motion for appointment of counsel (jaw) [Entry date 09/02/97]

9/2/97	36	TRAVERSE by plaintiff Robert L. Jones to [32-1] reply in support of dft's motion for sum jgm. (pa) [Entry date 09/08/97] [Edit date 07/07/99]
9/5/97	37	NOTICE OF APPEAL by plaintiff from [34-1] judgment, [33-1] order (cc) (djh) [Entry date 09/15/97]
9/15/97	–	Notice of appeal and certified copy of docket, order & judgment to USCA RE: [37-1] appeal (djh) [Entry date 09/15/97]
9/15/97	–	SUBMITTED to Judge Charles A. Moye Jr. on [37-1] appeal for in forma pauperis determination. (djh) [Entry date 09/15/97]
9/18/97	–	Acknowledgment by USCA regarding appeal pkt USCA dkt no. 97-9009 (djh)[Entry date 10/08/97] APPEAL
9/23/97	38	ORDER by Judge Charles A. Moye Jr. GRANTING [37-1] pla's motion to appeal in forma pauperis, GRANTING certificate of probable cause to appeal (cc/w cert to USCA) (jaw) [Entry date 09/24/97]
9/29/97	–	Acknowledgment by USCA regarding appeal pkt USCA dkt no. 97-9009 (djh) [Entry date 10/08/97]
10/17/97	–	REQUEST from USCA for original papers. (epm) [Entry date 10/21/97]
10/21/97	–	Original papers sent to USCA per request. (2 vols. pleadings) (epm) [Entry date 10/21/97]
10/24/97	–	Acknowledgment by USCA regarding receipt of Original papers. USCA dkt no. 97-9009 (epm) [Entry date 10/31/97]

11/25/97 – Record on appeal returned from USCA re: [37-1] appeal USCA dkt. # 97-9009, consisting of 2 vols of original papers (jaw) [Entry date 12/04/97]

11/25/97 – Request for Certificate of Readiness from Court of Appeals regarding [37-1] appeal USCA dkt no. 97-9009 (epm) [Entry date 12/05/97]

11/25/97 39 Certified copy of ORDER of USCA RE: Appeal [37-1] Notice of appeal, denying as moot because the District Court granted motion for leave to proceed ifp on appeal. Appellant's motion for appt. of cnsl. on appeal is GRANTED, USCA dkt no. 97-9009 <1st EOD 12/4/97, redocketed for proper linkage> (jaw) [Entry date 05/01/98] [Edit date 05/01/98]

12/5/97 – CERTIFICATE OF READINESS OF RECORD ON APPEAL with certified copy of docket mailed to USCA re: appeal USCA dkt. # 97-9009 (1 vol. pleadings) (epm) [Entry date 12/05/97]

12/9/97 – Acknowledgment by USCA regarding COR [0-0] USCA dkt no. 97-9009 (djh) [Entry date 12/30/97]

6/9/98 – FORTHWITH LETTER from USCA regarding [37-1] appeal. USCA dkt no. 97-9009. (dj) [Entry date 06/11/98]

6/11/98 – Certified and TRANSMITTED RECORD to USCA RE: appeal [37-1]. USCA dkt no. 97-9009. (dj) [Entry date 06/11/98]

6/23/98 – Acknowledgment by USCA regarding ROA [0-0], [37-1] (1 vol. pleadings).

USCA dkt no. 97-9009. (dj) [Entry date 06/25/98]

2/26/99 – Updated copy of docket sheet mailed to pla per his letter request of 2/26/99. Letter placed in correspondence. (jaw) [Entry date 03/09/99] APPEAL

3/14/99 – Docket sheet of civil action 1:95-cv-3012-CAM mailed to Albert Thomas who has a civil action pending in this court under civil action 1:96-cv-527-JOF, pla per his letter request rec'd 3/4/99. Pla also requested a coy of order 1/6/99 which is not on file. (jaw) [Entry date 03/14/99] [Edit date 03/14/99]

4/29/99 40 Certified copy of JUDGMENT of USCA REVERSING and REMANDING to the District Court for further action RE: [37-1] appeal USCA dkt. # 97-9009 (tcc) [Entry date 04/30/99] [Edit date 05/10/99]

4/29/99 – Case reopened. (tcc) [Entry date 04/30/99]

4/30/99 – Proposed mandate order (to CAM) (tcc) [Entry date 04/30/99]

5/7/99 – Appeal record returned from USCA RE: [37-1] appeal USCA dkt. # 97-9009 consisting of 1 vol orig record on appeal. (jaw) [Entry date 05/17/99]

5/11/99 41 MOTION by movant Majee Diaab to intervene with brief and affidavit to proceed ifp in support. (jaw) [Entry date 05/17/99]

5/13/99 42 ORDER by Judge Charles A. Moye Jr. having read and considered [40-1] the

		mandate of United States Court of Appeals (USCA), it is ORDERED and ADJUDGED that the mandate [40-1] is hereby made the judgment of this Court, (cc) (jaw) [Entry date 05/17/99]
5/18/99	45	MOTION by Pless Brown for leave to intervene, and claims for relief with brief in support. (shb) [Entry date 06/01/99]
5/19/99	43	MOTION by intervenor-plaintiff Mikhail Sharieff Al'Shabazz for leave to intervene and claims for relief with brief in support. *motion docketed per order of 5/19/99 in case No. 1:99-cv-1048-CAM* (jaw) [Entry date 05/21/99] [Edit date 05/21/99]
5/19/99	44	Affidavit in support of ifp re: motion to intervene. *affidavit docketed re: order of 5/19/99 in case No. 1:99-cv-1048-CAM* (jaw) [Entry date 05/21/99] [Edit date 05/21/99]
5/21/99	–	Rec'd letter from mov Najee Diaab regarding the status of [41-1] his motion to intervene. Updated copy of docket sheet mailed. (jaw) [Entry date 06/02/99] APPEAL
5/26/99	46	ORDER by Judge Charles A. Moye Jr. GRANTING IN PART AND DENYING IN PART [18-1] motion for summary judgment by J. Wayne Garner, GRANTING IN PART AND DENYING IN PART [19-1] motion for summary judgment by Robert L. Jones denying as moot [41-1] motion to intervene by Majee Diaab, DFts' are hereby DIRECTED to take all steps necessary to comply with this court's holdings as set forth by the Court of appeals with

		respect to pla as well as all others where appropriate, Clerk DIRECTED TO close this case, (cc) (jaw) [Entry date 06/02/99]
5/26/99	–	Case terminated. (jaw) [Entry date 06/02/99]
6/11/99	47	MOTION by defendant to alter judgment, or to amend [4-1] judgment with brief in support. (jaw) [Entry date 06/15/99]
6/16/99	48	MOTION by movant Majee Diaab for reconsideration of [46-1] order with brief in support. (bek) [Entry date 06/17/99]
6/28/99	–	SUBMITTED to Judge Charles A. Moye Jr. on [47-1] motion to alter judgment, [47-2] motion to amend [4-1] judgment (jaw) [Entry date 06/28/99]
6/30/99	49	NOTICE OF APPEAL by intervenor-plaintiff from [46-1] order Appeal information sheet due 7/14/99 (AIS & IFP Form sent to petitioner) (epm) [Entry date 07/01/99]
6/30/99	49	MOTION by intervenor-plaintiff to proceed in forma pauperis with brief in support. (epm) [Entry date 07/01/99]
7/1/99	–	SUBMITTED to Judge Charles A. Moye Jr. on [49-1] motion to proceed in forma pauperis (FILE IN CHAMBERS) (epm) [Entry date 07/01/99] [Edit date 07/01/99]
7/1/99	–	Notice of appeal and certified copy of docket to USCA RE: [49-1] appeal (epm) [Entry date 07/01/99]
7/6/99	50	CONSENT ORDER by Judge Charles A. Moye Jr., extending time until 7/31/99 to

file Notice of Appeal. (cc) (aet) [Entry date 07/06/99]

7/6/99 51 ORDER by Judge Charles A. Moye Jr. DENYING [48-1] motion for reconsideration of [46-1] order by Najee Diaab, DENYING [43-1] motion for leave to intervene and claims for relief by Mikhail Sharieff Al'Shabazz, DENYING [45-1] motion for leave to intervene by Pless Brown, DENYING [45-2] motion claims for relief by Pless Brown, GRANTING [47-1] motion to alter judgment, GRANTING [47-2] MOTION TO AMEND [4-1] JUDGMENT, denying [49-1] MOTION TO PROCEED IN forma pauperis by Mikhail Sharieff Al'Shabazz as MOOT. All proceedings shall be STAYED until the USSC reaches a decision reg. the petition for writ of cert. Defendants are hereby DIRECTED to promptly NOTIFY this court of any such resolution (cc) (bek) [Entry date 07/07/99] APPEAL

7/21/99 52 Acknowledgment by USCA RE: [49-1] appeal USCA dkt no. 99-120731 (als) [Entry date 07/26/99]

8/9/99 – USCA request of Docs. # 44 & 48 RE: [49-1] appeal USCA # 99-12073-I (epm) [Entry date 08/10/99]

8/10/99 – Forwarded Certified copy – Docs. # 44 & 48 to the USCA RE: [49-1] appeal USCA # 90-12073-I (epm) [Entry date 08/10/99]

8/31/99 – USCA acknowledgment of Doc. # 51 RE: [49-1] appeal USCA # 99-12073-I (als) [Entry date 09/01/99]

8/31/99 – USCA acknowledgment of Docs. # 44 & 48 RE: [49-1] appeal USCA # 99-12073-I (epm) [Entry date 09/01/99]

9/30/99 53 Notice of Supreme Court grant of Certiorari by defendant (as) [Entry date 10/04/99]

10/15/99 – USCA request of ORIGINAL PAPERS RE: [49-1] appeal USCA # 99-12073-I (als) [Entry date 10/20/99]

10/20/99 – Forwarded ORIGINAL PAPERS to the USCA RE: [49-1] appeal USCA # 99-12073-I (2 vol. pldgs) (als) [Entry date 10/20/99]

[ORIGINAL DOCUMENT HANDWRITTEN]

CIVIL RIGHTS COMPLAINT UNDER 42 U.S.C. § 1983

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

Robert L. Jones – D.020489
Ware C.I. 3620 Harris Rd.
Waycross, Georgia 31501
(Enter above the full name and prisoner identification number of the plaintiff(s).)

1 95-CV-3012CAM

-vs-

J. Wayne Garner Chairman, et. al
State Board of Pardons
And Paroles
(Enter above the full name of the defendant(s).)

I. Previous Lawsuits

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment?

Yes ( ) No (✓)

B. If your answer to A is yes, describe each lawsuit in the space below, (if there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to this previous lawsuit

Plaintiffs: N/A

Defendants: _____

2. Court (if federal court, name the district; if state court, name the county): _____

3. Docket Number: N/A

4. Name of judge to whom case was assigned: _____

5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?) _____

6. Approximate date of filing lawsuit: _____

7. Approximate date of disposition: N/A

II. Place of Present Confinement: Ware C.I. Waycross, GA. 31501

A. Is there a prisoner grievance procedure in this institution?

Yes (✓) No ( )

B. Did you present the facts relating to your complaint in the state prisoner grievance procedure?

Yes (✓) No ( )

C. If your answer is YES:

1. What steps did you take? I Filed A Request For Reconsideration

2. What was the result? No Reply

D. If your answer is NO, explain why not: _____

III. Parties

(In item A below, place your name in the first blank and place your present address in the second blank. Do the same for additional plaintiff, if any.)

A. Name of plaintiff Robert L. Jones Ware C.I.

Address 3620 Harris Rd. Waycross, Georgia 31501

(In item B below, place the full name of the defendant in the first blank, his official position in the second blank, and his place of employment in the third blank. Use item C for the names, positions, and places of employment of any additional defendants.)

B. Defendant J. Wayne Garner Chairman Et. Al

Employed as Chairman State Board of Pardons And

at Paroles, 2-Marton Luther King Jr. Drive S. E

C. Additional defendants: Atlanta, Georgia 30334

IV. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

This complaint are based on a decision handed down from State Board of Pardons and Paroles. Denying plaintiff parole with deprivation, under color of state law. Rights secured by the United States Constitution. The court has jurisdiction under 28 U.S.C. and 1343. Plaintiff's seeks declaratory relief pursuant to 28 U.S.C. §§ 2201, and 2202.

Plaintiff's contends he been denied due process, and equal protection of law under color of law. Also a violation of ex-post factor clause of the United States Constitution, by the change in the state parole board. "See, Attach Sheet"

V. Relief

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

Plaintiff is vexed without no adequate plain complete remedy at law to redress the constitutional wrongs addressed, and discribed [sic] herein. Plaintiff has been, and is continuing to be irreparable injured by the conduct, and actions of defendants unless the court grants the declaratory, and injunctive relief which plaintiff seeks.

Wherefore, plaintiff respectfully requests that this court enter a judgment granting him: see, attached sheet.

Attach seet [sic]. IV. Statement of Claim (Con'd)

Of February 1, 1985. Place the plaintiff, at a substantive disadvantage by applying terms of the rules chang [sic] to prospective paroles sentenced prior to rule change:

On August 16-20, plaintiff was tried, and convicted for the offense of murder, and sentence to life inprisonment [sic].

On August of 1989. Plaintiff was consider for parole. And on September 29, 1989 plaintiff was denied parole at that time. The main reasons for the decision cited by the board mumbers [sic] during their individual study of the case was "multiple

offenses." And the board decided to consider plaintiff again for parole during August of "1997" "notice" plaintiff. Filed motion to intervene May 15, 1991, this intervene motion was to enjoin C.T. Akins, Jay M. Fate. and filed in clerk's office U.S.D.C.-Atlanta June 3, 1991. By Luther D. Thomas, clerk, deputy clerk. Case No. 1'88-2421-RCF.

As a result, plaintiff was consider again in August of 1992. And was denied for the same reason stated in his 1989 decision. And was decided to be considered August of "1995" whach [sic] plaintiff was allowed to meet wite [sic] (1) one member of the board "so he said" Anyway, plaintiff was interviewed by this Mr. Smith. On Oct. 13, 1995. Plaintiff received a denyal [sic]. Dated. September 29, 1995 which stated: "you have been throughly [sic] and carefully considered for parole.

The board decision during their individual study of your case. Are circumstances, and nature of offense, and multiple offenses. The board has decided to consider you again for parole during August 2003.

(1)

Plaintiff. contends. That the denial of parole on September 29, 1995. "is" unconstitution [sic]. And Inadequate.

(2)

Plaintiff. contends. The board based their decision by using of parole criteria which are vague and ambiguous.

(3)

Plaintiff. contends. That the following decision of the parole board are "Racial Discrimination." Retaliation. Etc.

(4)

Plaintiff. contends. He has been denied due process, and equal protection of law under the color of law.

(5)

This decision from the board are inviolation [sic] of the ex-post factor clause of the United States Constitution.

In support of these issues. As follow:

1. Plaintiff. contends. That the denial of parole on September 29, 1995 "is" unconstitution [sic], and inadequate. The court held, if you are denied parole the board must give you a written statement of the reason for its decision, "vague reason are not enought [sic]. Conclusory statement not supported by the record are insufficient. And, simply stating that "the seriousness of your crim" is the reason for denial of parole has been held. Constitutionally inadequate. So has the mere statement that to release you "would depreciate the seriousness of your offense. Also the circumstances, and nature of the offense and multiple offenses . . .

2. Plaintiff. contends. That the board based their decision by using of parole criteria which are vague, and ambiguos. However, this issue are very clear. on wrongfully denied. However, where parole ard [sic] denied on the basis of erroneous information or misinformation, or unduly vague standards or criteria. or on a failure to provide minimum due process safeguards, the court will intervened for example, a parole board may not

deny parole to prisoner because of religious prejudice, by considering an description of the conduct underlying an offense, on the basis of an illegal disciplanary [sic] proceedure [sic], or by use of parole criteria. which are vague, and ambiguous . . .

3. Plaintiff. contends. that the following decision of the parole board are racial discrimination, and retaliation etc. which will be exsplain [sic] in ground # 4. That plaintiff, has been denied due process and equal protection of law under color of law . . . as plaintiff have said previously. Issue held that a prison is entitled to some due process safeguards. In the parole hearing stage. The particular due process protection discussed by the courts usually involve (1) meaningful reason for denial of parole, (2) access by the prisoner to his files, or to information to be considered by the board, and an opportunity to rebut erroneous information, (3) comprehensive explanatory guidelines for prisoners with respect to the rules, and procedures, # 4. representation by counsel, or advisor and # 5. An opportunity for the prisoner to present an affirmative case for parole. E.g., . . .

5. The main issue. This decision from the board are in violation of the ex-post factor clause of the United States Constitution.

Plaintiff contends. That he was tried, and convicted for the offense murder and sentence to life inprisonmend [sic] on August 16-20, 1982. And to deny plaintiff consideration for parole until 2003. Violated the ex-post clause.

Plaintiff. contends. Until 1979, a prison serving a life sentence in Georgia would be initially considered for

parole after serving (7) siven [sic] years, and would be reconsider every year thereafter . . .

On December 1, 1979 the state board of pardons/paroles. "the board" revised the applicable rule to require reconsideration every (3) three years after the initial seven. On February 1, 1985 "the board again revised the rule to allow an (8) eight years interval between reconsideration. However, plaintiff crime were committed before revision of the rules. But, the plaintiff are being required to serve (8) years between parole consideration pursuant to the new rules. Plaintiff, assert this is a violation of the ex-post factor clause.

Plaintiff contends. Until "1973" the board consisted of (3) three members. In 1973 the board increased to (5) five members. Subsequently, a convict must secure the voit [sic] of (3) three of the (5) five member in order to gain release.

Plaintiff contends. His crime was committed in "1982" however, he should be consider for parole under the sistem [sic] requiring (3) three voites [sic] for release wite [sic] as (8) eight years set-off truly are in violation of the ex-post foctor [sic] clause. Which are guridtees [sic] by the United States Constitution

Plaintiff contend, that he has been denied all the rights inbeded [sic] within this petition, and will continue to be unless what he seeks in this petition be granted. If, not conceivable, the board could at any time amend its rules to require a life sentence inmate to serve (50) fifty years without consideration for parole, and apply this rule to all inmates, serving life sentence. Indeed, the

board could at whim. Lengthen to the extent of effectively violing [sic] "all" prisoner's eligaibility [sic] dates – without running a foul of the ex-post factors prohibition.

ATTACHED SHEET

RELIEF.

1. A preliminary and premanent [sic] injuction [sic] which prohibits the defendants, and their successors from denying plaintiff his constitutional, and state, and fedral [sic] rights. Prohibit defendants during the pending of this lawsuit, or otherwise retaliating against plaintiff in anyway.

2. A declaratory judgment that the defendants acts, policies, and practices herein described and complained of violated plaintiff rights under the United States Constitution, and the ex-post factor clause controled [sic] by Atkin [sic] v. Snow.

3. Defendants pay cost of action.

4. Jury trial

5. Appointment of counsel.

6. Damages as follows:

a. Compensation damage for each defendant, $10,00.00

b. Punitive damages Et. al $10,00.00

c. Pain, and suffering, and emotional distress. Et. al $10,00.00

d. Nominal damages, Et. al $10

e. Any relief that the court deems just, and proper.

Wherefore, plaintiff. Respectfully requests this motion be granted, and further relief that the deems to be appropriate and just . . .

Signed this 23 day of Oct. 1995

Respectfully submitted
Robert Lee Jones D. 020489
Robert L. Jones, Pro se
Ware C.I. 3120 Harris Rd.
Waycross, GA. 31501

State of Georgia
Ware County C.I.
Waycross, Georgia 31501

I declare under penalty of perjury that the foregoing is true and correct. Executed on 10/23/95

/s/ Robert L. Jones
Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

Robert L. Jones D. 020489 Petitioner	:	AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS
-vs-	:	
J. Wayne Garner, Chairman, Et. al Respondent(s)	:	

I, Robert L. Jones, being first duly sworn, depose and say that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I further swear that the responses which I have made to questions and instrutions [sic] below are true.

1. Are you presently employed: Yes ( ) No (✓)

   a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer.

   b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received.

   May of 1982 about, $14,00.00 per month

2. Have you received within the past twelve months any money from any of the following sources?

   a. Business, profession or form of self-employment? Yes ( ) No (✓)
   b. Rent payments, interest or dividends? Yes ( ) No (✓)
   c. Pensions, annuities or life insurance payments? Yes ( ) No (✓)
   d. Gifts or inheritances? Yes ( ) No (✓)
   e. Any other sources? Yes ( ) No (✓)

   If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months.

   N/A

3. Do you own any cash, or do you have money in a checking or savings account?
   Yes ( ) No ( ) (Include any funds in prison accounts.) If the answer is yes, state the total value of the items owned.

   Listed below

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? Yes ( ) No (✓) If the answer is yes, describe the property and state its approximate value.

   N/A

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

   N/A

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 23 day of Oct, 1995.

/s/ Robert L. Jones, D.020489
Signature of Movant

CERTIFICATE

I hereby certify that the plaintiff herein has the sum of $ 41¢ on account to his credit at the Ware Correctional institution where he is confined. I further certify that plaintiff likewise has the following securities to his credit according to the records of said _____ institution:
WARE CORRECTIONAL INSTITUTION
3620 HARRIS ROAD
WAYCROSS, GEORGIA 31501

/s/ Rebecca Blanchard 10-23-95
Authorized Officer of Institution

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROBERT L. JONES,	*	
Plaintiff,	*	CIVIL ACTION NO.
v.	*	NO. 1:95-cv-3012-CAM
J. WAYNE GARNER, et al.,	*	
Defendants.	*	

ANSWER

(Filed May 15, 1997)

Come now ***J. WAYNE GARNER***, former Chairman, State Board of Pardons and Paroles, ***JAMES T. MORRIS***, former Chairman, State Board of Pardons and Paroles, ***GARFIELD HAMMONDS, JR.***, former Chairman, State Board of Pardons and Paroles, ***BOBBY K. WHITWORTH***, Member, State Board of Pardons and Paroles, and ***TIMOTHY E. JONES***, former Member, State Board of Pardons and Paroles, Defendants in the above-styled action, by counsel, Michael J. Bowers, Attorney General for the State of Georgia, and submit this their Answer and defenses to Plaintiff's Complaint in the above-styled action as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Defendants are entitled to a qualified immunity from suit.

THIRD DEFENSE

Defendants are entitled to a quasi-judicial immunity from suit for damages.

FOURTH DEFENSE

Plaintiff has failed to exhaust available state remedies.

FIFTH DEFENSE

Plaintiff has no liberty interest in parole or in the parole consideration process.

SIXTH DEFENSE

Plaintiff's Complaint is barred by the applicable statute of limitations.

SEVENTH DEFENSE

Responding to the allegations contained in Plaintiff's Complaint, Defendants answer as follows:

1.

In response to the allegations contained in the portion of Plaintiff's Complaint denominated "Previous Lawsuits," said allegations are hereby denied.

2.

In response to the allegations contained in the portion of Plaintiff's Complaint denominated "Place of Present Confinement," Defendants admit that Plaintiff is presently in the custody of the Georgia Department of Corrections, currently incarcerated at Ware State Prison in Waycross, Georgia. Defendants deny that Plaintiff has failed [sic] a grievance regarding his parole consideration, although Defendants note that such a claim is non-grievable.

3.

In response to the allegations contained in the portion of Plaintiff's Complaint denominated "Parties," Defendants admit that Plaintiff is presently incarcerated at Ware State Prison. Defendants admit that they are current or former members of the State Board of Pardons and Paroles.

4.

In response to the allegations contained in the portion of Plaintiff's Complaint denominated "Statement of Claim," said allegations are hereby denied as written. Defendants deny that any federally-protected constitutional right of Plaintiff has been violated by the Board during Plaintiff's incarceration.

5.

In response to the allegations contained in the portion of Plaintiff's Complaint denominated "Relief," said allegations are hereby denied.

6.

Defendants deny that Plaintiff is entitled to the relief requested, or to any relief whatsoever.

7.

Any allegation of fact or law contained herein not specifically admitted, denied, or otherwise controverted is hereby denied.

CONCLUSION

Wherefore, having answered the Complaint and stated their separate defenses and objections to jurisdiction, Defendants prays [sic] that the Petition be dismissed without requiring further response from them, that Plaintiff be assessed and Defendants awarded all costs incurred, including attorney's fees, and that all costs of this action be taxed against the Plaintiff.

Respectfully submitted,

MICHAEL J. BOWERS 071650
Attorney General

MARY BETH WESTMORELAND
750150
Deputy Attorney General

/s/ Carol A. Callaway
CAROL A. CALLAWAY
104590 by NBC
Senior Assistant Attorney
General

/s/ Neal B. Childers
NEAL B. CHILDERS 124410
Senior Assistant Attorney
General

Please serve:

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Senior Assistant Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
(404) 656-3355

[Certificate Of Service Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROBERT L. JONES,	*	
	*	
Plaintiff,	*	CIVIL ACTION NO.
v.	*	NO. 1:95-cv-3012-CAM
	*	
J. WAYNE GARNER, et al.,	*	
	*	
	*	
Defendants.	*	

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

(Filed May 27, 1997)

Come now ***J. WAYNE GARNER***, former Chairman, State Board of Pardons and Paroles, ***JAMES T. MORRIS***, former Chairman, State Board of Pardons and Paroles, ***GARFIELD HAMMONDS, JR.***, former Chairman, State Board of Pardons and Paroles, ***BOBBY K. WHITWORTH***, Member, State Board of Pardons and Paroles, and ***TIMOTHY E. JONES***, former Member, State Board of Pardons and Paroles, Defendants in the above-styled action, by counsel, Michael J. Bowers, Attorney General for the State of Georgia, and submit this their Motion for Summary Judgment in the above-styled action. This Motion is

supported by Brief and exhibits submitted contemporaneously herewith.

Respectfully submitted,

MICHAEL J. BOWERS 071650
Attorney General

MARY BETH WESTMORELAND
750150
Deputy Attorney General

/s/ Carol A. Callaway
CAROL A. CALLAWAY
1045901 by NBC
Senior Assistant Attorney General

/s/ Neal B. Childers
NEAL B. CHILDERS 124410
Senior Assistant Attorney General

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROBERT L. JONES,	*	
	*	
Plaintiff,	*	CIVIL ACTION NO.
v.	*	NO. 1:95-cv-3012-CAM
J. WAYNE GARNER, et al.,	*	
	*	
Defendants.	*	

BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. STATEMENT OF THE CASE

Plaintiff is a convicted felon, currently incarcerated at Ware State Prison in Waycross, Georgia, in the custody of the Georgia Department of Corrections. In his lawsuit, brought against five current and former members of the State Board of Pardons and Paroles, Plaintiff raises a single issue (it is Defendants' understanding that all remaining issues were dismissed by the Court, pursuant to 28 U.S.C. § 1915, prior to service of process).

Plaintiff alleges that the Board's decision to defer his next reconsideration for parole for a maximum of eight years, as authorized by Georgia law, violates his ex post facto rights by adversely effecting his potential for parole. Plaintiff contends that ***Akins v. Snow,*** 922 F.2d 1558 (11th Cir.), ***cert. denied,*** 501 U.S. 1260 (1991), prohibits the application of this rule to him.

II. STATEMENT OF FACTS

On July 23, 1974, Plaintiff was sentenced following conviction on murder charges in the Superior Court of Fulton County. Plaintiff was sentenced to life imprisonment for the murder of Jack Bell. On November 24, 1979, Plaintiff escaped. While on escape, Plaintiff killed Frances Tutt Bell. Plaintiff was convicted of her murder and sentenced to life imprisonment, again in the Superior Court of Fulton County, on August 20, 1982.

Plaintiff was initially considered for, and denied, parole on September 29, 1989. He was scheduled for reconsideration in August, 1997. Plaintiff was considered for a second time, and denied parole, on September 1, 1992. He was scheduled for reconsideration in August, 1995. On September 29, 1995, Plaintiff was reconsidered. He was denied parole and advised that his next reconsideration would come within eight years. Plaintiff thereupon filed suit.

III. ARGUMENT AND CITATION OF AUTHORITY

THE "SET-OFF" OF PLAINTIFF FOR FUTURE RECONSIDERATION OF PAROLE HAS NO MEANINGFUL EFFECT ON THE POSSIBILITY OF PAROLE FOR PLAINTIFF; THEREFORE, THE APPLICATION OF THE RULE TO PLAINTIFF DOES NOT VIOLATE THE EX POST FACTO CLAUSE.

In ***Akins v. Snow,*** 922 F.2d 1558 (11th Cir.), ***cert. denied,*** 501 U.S. 1260 (1991), the United States Court of Appeals for the Eleventh Circuit ruled upon the application of Ga. Admin. Comp. Ch. 475-3-.05(2) to prisoners

whose crime had been committed prior to the amendments to that regulation. The Court found that a retroactive application would violate the ex post facto clause.

Akins has not received majority support among the circuits; indeed, it is the minority rule. ***See Bailey v. Gardebring,*** 940 F.2d 1150, 1157 (8th Cir. 1991). Following the decision of the United States Supreme Court in ***California Department of Corrections v. Morales,*** ___ U.S. ___, 115 S.Ct. 1597 (1995), the Eleventh Circuit itself noted that the continued vitality of ***Akins*** was "questionable." ***Jones v. Georgia Board of Pardons and Paroles,*** 59 F.3d 1145, 1149 (11th Cir. 1995). The Court did not, however, overrule ***Akins*** at that time, as the issue was not squarely before the Court.

In ***Morales,*** the Supreme Court outlined the factors which the court should apply in making the determination. The Court ruled that it is not the mere possibility of increased punishment which creates an ex post facto violation; rather, there is no violation if the change "creates only the most speculative and attenuated risk of increasing the measure of punishment attached to the covered crimes." ***Morales,*** 115 S.Ct. at 1604. ***See also Hill v. Jackson,*** 64 F.3d 163, 169-70 (4th Cir. 1995) (similar Virginia provision does not violate the ex post facto clause). As is demonstrated ***infra,*** the amendment in question falls within this category. Therefore, no violation is present.

First, the Court noted that the amendment applied only to a class of prisoners for whom the likelihood of release on parole is quite remote. ***Morales,*** 115 S.Ct. at 1603. In ***Hill,*** the Fourth Circuit found that a provision applicable to: (1) inmates serving a life sentence; (2)

inmates with a single sentence of seventy years or more for a violent offense, and at least ten years to serve before mandatory release; or (3) inmates with multiple consecutive sentences totalling at least 70 years, one of which is for a violent offense, and at least ten years to serve before mandatory release was sufficiently limited to satisfy ***Morales. Hill,*** 64 F.3d at 169. Georgia's regulation is more limited; it is limited in application solely to life sentence inmates. Only those who commit capital felonies or who are recidivists may receive a life sentence in Georgia. By definition, those who commit a capital felony or are recidivists are unlikely to receive parole. In Plaintiff's case, he has been convicted of multiple capital felonies (two counts of murder) in Georgia, including one murder committed after having escaped from custody. Thus, Plaintiff has been convicted of multiple capital felonies, is a recidivist, is an escape risk, and has a significant history of violence. Plaintiff clearly fits into the category of inmates "for whom the likelihood of release on parole is quite remote." ***Id.*** Thus, the first aspect of the ***Morales*** test is satisfied.

Secondly, the ***Morales*** court found that the Board's authority was carefully tailored because it had no effect upon initial eligibility, but affected only the timing of a subsequent review. Thus, the amendment would have no effect upon a prisoner unless the Board concluded, not only that parole should not be granted at that time, but that it would not be reasonable to expect that parole would be granted during the following years. ***Morales,*** 115 S.Ct. at 1604; ***Hill,*** 64 F.3d at 169. The same is true in Plaintiff's case. The amended regulation has no effect on Plaintiff's eligibility for parole; he first became eligible

for parole in 1989, and has remained eligible since that date. The only effect upon Plaintiff is upon the timing of subsequent reconsiderations. As in ***Morales,*** the Board has concluded in Plaintiff's case that, in light of the fact that Plaintiff has been convicted of multiple capital felonies, is a recidivist, is an escape risk, and has a significant history of violence, it is not reasonable to expect that he will be paroled in the near future.

The ***Morales*** court found significant the fact that the California statute did not preclude the California Board from expediting the prisoner's release date in appropriate circumstances. ***Morales,*** 115 S.Ct. at 1605; ***Hill,*** 64 F.3d at 169. At first blush, this might appear to distinguish the Georgia rule from the California statute, as the Eleventh Circuit in ***Akins*** stated that the Georgia regulation renders the inmate "effectively ineligible for parole between two parole reconsideration hearings." ***Akins,*** 922 F.2d at 1561. However, the Court was mistaken as to the effect of the regulation. As shown in Mr. Amideo's affidavit attached hereto, the "set-off" merely fixes the maximum time that will pass prior to reconsideration; the inmate is not ineligible for parole during this time, and may be reconsidered at an earlier time if circumstances warrant or if additional information is received by the Board. Thus, this aspect of the ***Morales*** test is also satisfied.

Finally, the ***Morales*** court found significant that the California Board retained the authority to establish a reconsideration schedule tailored to the circumstance of an individual inmate's case. ***Morales,*** 115 S.Ct. at 1604; ***Hill,*** 64 F.3d at 169. The same is true of the Georgia regulation. The regulation authorizes, but does not

require, the Board to delay reconsideration for a maximum of eight years. The Board could have scheduled a reconsideration at any time prior to the expiration of eight years, if it had seen fit to do so. It has chosen not to [sic] so in this case; however, because the Board retained that authority, the third ***Morales*** factor is also satisfied. Of course, should new information or changed circumstances warrant an earlier reconsideration, the Board has in place an existing means for doing so. ***Hill,*** 64 F.3d at 169.

Ultimately, then, the lesson of ***Morales*** is that procedural modifications by a Parole Board exercising discretionary authority do not violate the ex post facto clause when, as a practical matter, the changes create "only the most speculative and attenuated risk of increasing the measure of punishment attached to the covered crimes." ***Morales,*** 115 S.Ct. at 1605. That is precisely the situation present in the case at bar. Plaintiff has been convicted of multiple capital felonies, is a recidivist, is an escape risk, and has a significant history of violence. The Board has concluded, after extensive review of his case and three separate considerations for parole by the members of the Board, that it is unlikely that Plaintiff will be granted parole during the eight years following the latest reconsideration. Having made that determination, the Board may legitimately pursue the twin goals of (1) focusing the time-consuming and costly efforts of parole consideration on those with a reasonable chance of parole in the near future and those who have just become eligible for consideration and (2) provide the inmate with a realistic assessment of his chance for parole, rather than

inflating, then dashing, his hopes each year when he has no reasonable chance of parole at that time.

CONCLUSION

For the above and foregoing reasons, Defendants respectfully request that this Honorable Court grant Defendants' Motion for Summary Judgment and enter judgment in their favor.

Respectfully submitted,

MICHAEL J. BOWERS 071650
Attorney General

MARY BETH WESTMORELAND 750150
Deputy Attorney General

/s/ Carol A. Callaway
CAROL A. CALLAWAY 104590 by NBC
Senior Assistant Attorney General

/s/ Neal B. Childers
NEAL B. CHILDERS 124410
Senior Assistant Attorney General

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROBERT L. JONES,	*	
	*	
Plaintiff,	*	CIVIL ACTION NO.
v.	*	NO. 1:95-cv-3012-CAM
	*	
J. WAYNE GARNER, et al.,	*	
	*	
Defendants.	*	

DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Come now ***J. WAYNE GARNER,*** former Chairman, State Board of Pardons and Paroles, ***JAMES T. MORRIS,*** former Chairman, State Board of Pardons and Paroles, ***GARFIELD HAMMONDS, JR.,*** former Chairman, State Board of Pardons and Paroles, ***BOBBY K. WHITWORTH,*** Member, State Board of Pardons and Paroles, and ***TIMOTHY E. JONES,*** former Member, State Board of Pardons and Paroles, Defendants in the above-styled action, by counsel, Michael J. Bowers, Attorney General for the State of Georgia, and submit this their Statement of Undisputed Material Facts in Support of Defendants' Motion for Summary Judgment.

1.

On July 23, 1974, Plaintiff was sentenced following conviction on murder charges in the Superior Court of Fulton County. Plaintiff was sentenced to life imprisonment.

2.

On November 24, 1979, Plaintiff escaped from custody.

3.

While on escape, Plaintiff killed Frances Tutt Davis on March 26, 1982. Plaintiff was convicted of her murder and sentenced to life imprisonment on August 20, 1982 and sentenced to life imprisonment in the Superior Court of Fulton County.

4.

Plaintiff was considered for parole on September 29, 1989, and denied at that time. He was advised that his next reconsideration would come within eight years.

5.

On September 1, 1992, Plaintiff was reconsidered. He was denied parole and again advised that his next reconsideration would come within three years.

6.

On September 29, 1995, Plaintiff was reconsidered for parole, was denied parole, and was advised that his next reconsideration would come within eight years.

7.

Georgia's regulation governing the deferral of parole reconsideration is limited in application solely to life sentence inmates. Only those who commit capital felonies or who are recidivists may receive a life sentence in Georgia.

8.

Life sentence inmates are a category of inmates "for whom the likelihood of release on parole is quite remote."

9.

The amended regulation has no effect on Plaintiff's eligibility for parole; he first became eligible for parole in 1989, and has remained eligible since that date. The only effect upon Plaintiff is upon the timing of subsequent reconsiderations.

10.

The reconsideration deferral, or "set-off," merely fixes the maximum time that will pass prior to reconsideration; the inmate is not ineligible for parole during this time, and may be reconsidered at an earlier time if circumstances warrant or if additional information is received by the Board.

11.

The regulation authorizes, but does not require, the Board to delay reconsideration for a maximum of eight years. The Board can schedule a reconsideration at any time prior to the expiration of eight years, although it has not seen fit to do so in Plaintiff's case.

12.

Ga. Admin. Comp. Ch. 475-3-.05(2) may be constitutionally applied to Plaintiff without violating the ex post facto clause.

Respectfully submitted,

MICHAEL J. BOWERS 071650
Attorney General

MARY BETH WESTMORELAND 750150
Deputy Attorney General

/s/ Carol A. Callaway
CAROL A. CALLAWAY 104590 by NBC
Senior Assistant Attorney General

/s/ Neal B. Childers
NEAL B. CHILDERS 124410
Senior Assistant Attorney General

Please serve:

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DEFENDANT'S EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROBERT L. JONES, Plaintiff	)	CIVIL ACTION NO. 1:95-CV-3012-CAM
v.	)	
J. WAYNE GARNER, ET. AL. Defendants	)	

AFFIDAVIT OF WILLIAM F. AMIDEO

Personally appeared before me, the undersigned officer, authorized to administer oaths in and for the State of Georgia, William F. Amideo, who, having been first duly sworn, did state under oath the following:

1.

My name is William F. Amideo, I am *sui juris* and competent to testify in this matter.

2.

I give this affidavit as evidence in the above styled action, and for any other lawful purpose.

3.

I am employed as Director of Legal Services for the State Board of Pardons and Paroles and in my official capacity also serve as Secretary of the Board and custodian of all records maintained by the Board on persons subject to the constitutional jurisdiction of the Board.

4.

I make this Affidavit based upon my personal knowledge of its contents.

5.

I have examined the records of the Board pertaining to inmate Robert Jones, D-20489.

6.

On July 23, 1974, Robert Jones was convicted in Fulton Superior Court of the murder of Jack Bell. On that date he was sentenced to the Department of Corrections for life. Under the then existing Georgia law he would have first been considered for parole in 1981.

7.

On November 24, 1979, Robert Jones excaped [sic] from the custody of the Georgia Department of Corrections. While on escape he stabbed Frances Tutt Davis on March 26, 1982. Ms. Davis died on April 2, 1982. Robert Jones was convicted of the murder of Frances Tutt Davis in Fulton Superior Court on August 20, 1982 and sentenced to life imprisonment.

8.

In September of 1989, Mr. Jones was first considered for parole. The Board voted to deny parole to Mr. Jones and notified him by letter dated September 29, 1989, which is attached as Exhibit 1. Pursuant to the Board's then existing policy, Mr. Jones was scheduled for reconsideration of parole in August of 1997.

9.

Pursuant to the decision of the United States Court of Appeals on February 7, 1991, in *Akins v. Snow*, 922 F. 2d 1558 (11th Cir 1991), the Board adopted a new policy of reconsidering life sentenced inmates for parole at three year intervals for those inmates whose convictions occurred between December 1, 1979 and February 1, 1985. Accordingly, Mr. Jones was reconsidered by the Board in July of 1992. Mr. Jones was denied parole by vote of the Board and notified in a letter dated September 1, 1992, which is attached as Exhibit 2. Mr. Jones was then scheduled for reconsideration of parole in August of 1995.

10.

In August of 1995, the Board again reconsidered Mr. Jones for parole. The Board decided at that time to deny parole to Mr. Jones. Further, based upon the decision of the United States Supreme Court in April of 1995, in the case of *California Department of Corrections v. Morales*, 115 S. Ct. 1597 (1995), the Board found that the circumstances of his multiple violent offenses made it not reasonably likely that he would be paroled within eight years of the August, 1995, reconsideration. Accordingly, after its full review of the relevant facts, the Board denied parole to Mr. Jones and reset his next consideration for August of 2003. Mr. Jones was informed of the Board's decision in a letter dated September 29, 1995, which is attached as Exhibit 3.

11.

Under the Board's current policy, life sentenced inmates who have committed capital offenses and

inmates serving life sentences under Georgia's Serious Violent Felony Recidivist Laws may be set-off from one to eight years for reconsideration for parole after their statutorily established first consideration for parole. The time of the initial parole eligibility is not affected by the set-off for reconsideration. In each case where a reconsideration is set-off for up to eight years, the Parole Board has made an individualized finding, after a full review of the facts of the case, that there is no reasonable expectation that parole would be granted in the intervening years. Further, the Board has an existing expedited review procedure to evaluate a case during the intervening set-off period should new information or circumstances warrant a sooner review. Finally, the Board retains the authority to change the frequency of suitability reviews to meet its needs. A copy of the existing Board policy is attached as Exhibit 4.

12.

Race is not, and has never been, a criterion for the Board in making parole decisions nor in determining the period for reconsideration of parole of a life sentenced inmate.

13.

The primary named defendant, J. Wayne Garner, is no longer a member of the State Board of Pardons and Paroles. The current members of the State Board of Pardons and Paroles are listed as follows: Walter Ray, Chairman, Jim Wetherington, Vice Chairman, Bobby

Whitworth, Member, Garfield Hammonds, Member, Dr. Betty Ann Cook, Member.

Further Affiant saith not.

/s/ William F. Amideo
William F. Amideo,
Director
Legal Services
State Board of Pardons
and Paroles

Sworn to and subscribed before
me upon this ___ day of April,
1997.

_____

Notary Public
My commission expires

Exhibit 1

STATE BOARD OF PARDONS AND PAROLES

Fifth Floor, East Tower
Floyd Veterans Memorial Building
2 Martin Luther King, Jr. Drive, S.E.
Atlanta, GA 30334

[Names Omitted In Printing]

September 29, 1989

Mr. Robert Jones, D-20489
C/O Warden
Georgia State Prison
Reidsville, GA

Dear Mr. Jones:

You have been thoroughly and carefully considered for parole. The Board's decision is to deny parole at this time. The main reasons for the decision cited by the Board members during their indivdual [sic] study of your case are multiple offenses.

The Board has decided to consider you again for parole during August 1997.

Sincerely,

FOR THE BOARD:

Elizabeth Reynolds, Supervisor
Disposition Unit

ER/np

cc Warden
Parole Supervisor
GDC Classification and Assignment Section

Exhibit 2

STATE BOARD OF PARDONS AND PAROLES

Fifth Floor, East Tower
Floyd Veterans Memorial Building
2 Martin Luther King, Jr., Drive, S.E.
Atlanta, Georgia 30334

[Names Omitted In Printing]

September 1, 1992

Mr. Robert Jones, D-20489
C/O Warden
Ware Correctional Institute
Waycross, GA

Dear Mr. Jones:

You have been thoroughly and carefully considered for parole. The Board's decision is to deny parole at this time. The main reasons for the decision cited by the Board members during their individual study of your case are circumstances and nature of the offense and multiple offenses.

The Board has decided to consider you again for parole during August 1995.

Sincerely,

FOR THE BOARD:

/s/ Elizabeth Fortson
Elizabeth Fortson, Supervisor
Disposition Unit

EF/np

cc: Warden
Parole Supervisor Office
GDC - File

Exhibit 3

State Board of Pardons and Paroles

(LOGO)

FLOYD VETERANS MEMORIAL BUILDING
2 MARTIN LUTHER KING, JR. DRIVE, S.E.
FIFTH FLOOR, EAST TOWER
ATLANTA, GA 30334-4309
(404) 656-5651

[Names Omitted In Printing]

September 29, 1995

Mr. Robert Jones, D-20489
C/O Warden
Ware Correctional Institute
Waycross, Ga.

Dear Mr. Jones:

You have been thoroughly and carefully considered for parole. The Board's decision is to deny parole at this time. The main reasons for the decision cited by the Board members during their individual study of your case are circumstances and nature of the offense, and multiple offenses.

The Board has decided to consider you again for parole during August 2003.

Sincerely,

FOR THE BOARD:

/s/ E. Fortson
E. Fortson, Senior Supervisor
Disposition Unit

EF/th

cc: Warden
Parole Supervisor Office Dist. #
GDC – File

Exhibit 4

(LOGO) State Board of Pardons and Paroles

BOARD POLICY STATEMENT

POLICY: Interval for Reconsideration of Parole Denials in Life Sentence Cases

NUMBER: 4.110

PAGE 1 OF 2

EFFECTIVE DATE: October 1, 1996

BY: Division Director
Clemency Division

DATE OF REVIEW: October 1, 1997

ACA STANDARDS:

REFERENCE/SOURCE MATERIALS: O.C.G.A. Title 42, Chapter 9, Section 2; Rules and Regulations of the State of Georgia [475-03-.05(2)]

1.101. AUTHORITY: Under the provisions of O.C.G.A. §42-9-2, management and control of the agency is vested in the Board which has responsibility to promulgate rules and regulations governing its activities.

1.102. PURPOSE: To establish the maximum possible interval, in a Life Sentence Case, between a decision to deny parole and the time at which reconsideration for parole will occur.

1.103. APPLICABILITY: This policy applies to all Life Sentence Cases eligible for parole consideration.

1.104. DEFINITIONS: As used in this document the following definitions apply: LIFE SENTENCE CASES: All cases with a controlling Life Sentence which are eligible for parole consideration inclusive of those Life Sentences for which parole was previously granted but subsequently revoked.

1.105. POLICY: It is the policy of the Board that all Life Sentence Cases denied parole may be set for reconsideration up to a maximum of eight years from the date of last denial when, in the Board's determination, it is not reasonable to expect that parole would be granted during the intervening years. Inmates set-off under this policy may receive expedited parole reviews in the event of a change in their circumstance or where the Board receives new information that would warrant a sooner review.

1.106. PROCEDURES: At the time the Members vote to deny parole in a Life Sentence Case, the Members will indicate the number of years the inmate must serve prior to being next considered.

Adopted _____
Date

_____
Garfield Hammonds, Jr.,
Chairman

_____
Bobby K. Whitworth,
Vice Chair

_____
Timothy E. Jones, Member

_____
Jim Wetherington, Member

_____
Walter S. Ray, Member

[Certificate Of Service Omitted In Printing]

[ORIGINAL DOCUMENT HANDWRITTEN]

United States District Court For
Northern District of Georgia
Atlanta, Division

Robert L. Jones Pro' se Plaintiff,	)	Civil Action No: 1:95-cv-3012-CAM
v.	)	Civil Right 28 U.S.C. § 1983
J. Wayne Garner Chairman Georgia State Board of Pardons and Paroles et al.	)	
Defendants.	)	

Brief in Support of Plaintiff Motion
For Summary Judgment

Comes Now, Robert L. Jones a pro' se Plaintiff in good faith With his Brief in Support of Motion for Summary Judgment Pursuant to Fed.R. of Civ. P. Rule # 56. "On the grounds, that there is No genuine issue as to any Material facts in dispute, for Case at bar was Affirmed in Part, Reversed in Part And remanded only on the Ex Post Facto issue. This Case Was reopen Feb. 27, (1997). With direction for Plaintiff to Complete the forms that he were Enable With And return them to the Clerk of Court Within (30) days from date of Order, so that process Could be served upon the defendants by the United State Marshal service and, "Diane Avery accepted Service for all (5) five Parties in Case at bar see, EXB. (A) Attached hereto, hereby.

This Complaint Was filed in the United States District Court For the Northern District of Georgia. November 11,

(1995) And Was dismissed As being frivolous Pursuant to 28 U.S.C. § 1915(d). However, The United States Court of Appeals (11th Cir.) denied, or Affirmed all Grouns, Except (1) one, "the Ex Post Facto Claim" in which they "Reversed" the Dismissal of the Ex Post Facto Claim faining the Claim is Not frivalous due to the holding in "Morales" Therefore, this Action is back before this Court for further Proceeding. And the United States Magistrate Judge's Richard H. Diane ordered this case reopen March 5, (1997). Plaintiff have served upon all Defendants through United State Marshal Service. In fact in light of the facts Alleged. There is no Genuine issues as to any Material facts in dispute, the moving party is entitle to Summary Judgment as a Matter of law. And pursuant to Fed.R. of Civ. P. Rule # 56(c) For the only issue to be consider Are the Ex Post Facto issue.

"HISTORY OF CASE"

Reopen Subm D.J.

Proceedings Include All Events
1:95-cv-3011, Jones v. Garner et al.

11/21/95	1.	Complaint with request to proceed in Forma Pauperis with order by Mag. Judge Richard H. Deone Jr. Granted request Service of Process Shall Not issue at Present time, [filed forwarded to State law Clerk, cc (Jan) (Entry date 11/28/95)
11/21/95	2.	Order of proceed in forma Pauperis, by Mag Judge Richard H. Deone, Jr. cc [Jan] (Entry date 12/28/95]

12/26/95	3.	Order dismissing complaint [1-1] Pursuant to 28 U.S.C. 1915(d) by Judge Charles A. Moye Jr. cc [Jan] [Entry date 12/29/95]
12/26/95	4.	Judgment Entered on In Forma Pauperis Complaint [1-1] for Dff. Against Pla. Dismissing Action Pursuant to 28 U.S.C. 1915(d) cc [Jan] (Entry 12/29/95]
1/12/96	5.	Notice of Appeal from Judgment [4-1] Order dismissing complaint [1-1] Pursuant to 28 U.S.C. 1915(d) [3-1] [3-2] by Pla filing fee Not paid [Jan] [Entry date 1/18/96]
1/18/96	--	Submitted on Notice of Appeal for in forma Pauperis determination [5-1] to Judge Charles A. Moye Jr. [Jan]
1/18/96	--	Notice of Appeal certified copy of order 12/26/95 Judgment of 12/26/95, and Certified Copy of docket to U.S. Court of Appeals Re: by Robert L. Jones for Court of Appeal [5-1] [Jan].
1/19/96	6.	Order granting Pla's Motion to appeal In Forma Pauperis [5-1] Certificate of Probable cause is denied by Judge Charles A. Moye Jr. cc/cert to U.S.C.A. [Jan] [Entry date [1/23/96] [Elect date 1/23/96]
1/31/96	--	Acknowledgement by the court of appeals Regarding Appeal U.S.C.A. dat. No. 96-8078 [RAg] [Entry date 2/1/96]

2/13/96	--	Request for Certificate of readiness from the Court of Appeals regarding Appeal U.S.C.A. 96-8078 [re] [Entry date 2/14/96]
2/14/96	--	Certificate of readiness of record on Appeal With Certified Copy of docket mailed to U.S.C.A. [1 vol of Pleadings] U.S.C.A. 96-8078 [rog]
2/23/96	--	U.S.C.A. Ack. receipt of Cor. U.S.C.A. 96-8078 [rog] [Entry date 2/26/96]
3/1/96	--	Request from U.S.C.A. for the original papers Mailed to the U.S.C.A. [1 vol of Pleadings] U.S.C.A. 96-8078 [F.b.h.]
3/11/96	--	U.S.C.A. Ack receipt of the original papers U.S.C.A. 96-8078 [rog] [Entry date 3/13/96] Docket as of April 3, 1997, 11:49, A.M. Page – 2.
4/17/96	7.	Certified Copy of order of the U.S. Court of Appeals Denying Appeal order [7-1] cc [Jan] [Entry date 4/25/96]
12/16/96	8.	Motion by Plaintiff for Appointment of Counsel With Brief in support [Jan] [Entry date 1/7/97]
12/16/96	9.	Motion by Plaintiff for Evidentry hearing [Jan] [Entry date 1/7/97]
12/16/96	10.	Motion by plaintiff for leave to file Discovery [Jan] [Entry date 1/7/97]
12/26/96	11.	Certified Copy of Judgment of U.S.C.A. Affirming in Part, and Reversed in Part Judgment of this Court Appeals U.S.C.A. dkt. 96-8078 [Jan] [Entry date 1/14/97]

4/26/96	11.	Certified Copy of Judgment of U.S.C.A. Remanded to the District Court for further Action Judgment of this Court Appeal U.S.C.A. dkt. 96-8078 [Jan] [Entry date 1/14/97]
1/8/97	--	Submitted to Judge Charles A. Boye Jr. ON [8-1] Motion for Appointment of Counsel [9-1] Motion for Evidentiary hearing [10-1] Motion for leave to file Discovery [Jan]
1/14/97	--	Submitted to Judge Charles A. Graye Jr. on [11-1] appeal Judgment [Jan]
2/11/97	12.	Order by Judge Charles Jr. to reopen case and forward to Mag. Judge Richard H. Deone Jr. for further proceeding consistent With the opinion of the U.S.C.A. for the 11th Circuit (cc) [Jan] [Entry date 2/1397]
2/11/97	--	Case Referred to Mag Judge Richard H. Deone Jr. Calend Sheets forwarded [Jan] [Entry date 2/13/97]
2/13/97	--	Submitted to Mag. Judge Richard H. Deone Jr. on [8-1] Motion for Appointment of Counsel [9-1] Motion for Evidentiary hearing [10-1] Motion for leave to filed Discovery [Jan]
2/27/97	13.	Order by Mag Judge Richard H. Deone Jr. Allowing Case to proceed as any Civil action, Direction Plaintiff to Complete service form and return to Clerk with 30 days so that process May be served upon the dets. by U.S. Marshal Service (cc) [Jan] [Entry date 3/5/97]

3/12/97	14.	Notice of request for 3 Summons Forms and 5 U.S.M. 285 Marshal forms by Plaintiff Mailed to Pla this date [Jan] [Entry date 3/18/97]
3/15/97	--	Submitted to Judge Charles A. Moye Jr. [8-1] Motion for Appointment of Counsel [9-1] Motion for Evidentiary hearing [10-1] Motion for leave to file Discovery [Jan] Docket As April 3, 1997, 11:49, A.M. page 3
3/18/97		Rec'd one completed USM Form 3. Summons from Pla Mailed Pla additional Marshal forms And Summons Placed Summons for James T Morris, and Timothy E. Jones in file Pending receipt of completed U.S.M. 285 to be forwarded to U.S. Marshal for service [Jan] [Entry date 3/31/97]
3/18/97	--	Summons issues and U.S.M. 285 prepared for service upon Defendant J. Wayne Garner Forwarded to U.S.M. with service copy of Complaint Consent form to Process before Magistrate, And Pretrial instructions [Jan] Entry date 3/31/97]
4/3/97		Completed Referral to Mag. Judge Richard H. Deone Jr. Per David Powell Law Clerk for RHD. [Jan] [Edit] date 4/3/97]

[End of P.]

"Statement of Facts"

Plaintiff contends, the facts are not in dispute On December 1, [1979] The Board of Pardons and Paroles, "the board" revise the applicable rules to require Reconsideration every (3) three years after the initial [7] seven . . . On February 1, [1985] "the board again, revised the rules allow an Eight year interval between resideration. In fact, Plaintiff Crime was Committed before revision of the rules.

However, Pursuant to the New rules, Plaintiffs Are being required to serve Eight years between Parole Consideration. . . . Plaintiff Assert, that this is a violation of the Ex Post Facto Clause . . . "Notice" That this Case was reversed and remanded back to this Court on the "Ex Post Facto issue"

"Argument And Citations of Authority"

Plaintiff Contends, that ex post Facto Prohibition forbids the Congress And the State to enact any law 'Which imposes A Punishment for An Act Which Was Not Punishable at the time the crime was committed; or imposes additional punishment to that than prescribed . . . Weaver v. Graham, Supra, At 101 S.Ct. 963 [quoting Gumming v. Missouri 71 U.S. [4 Wall] 277,325-26 18 L.Ed. 356 [1866] For a law to be considered Ex Post Facto, "It Must be retrospective, that is, it Must apply to the events occurring before its enactment, and it Must disadvantage the offender Affected by it." Id at 101. S.Ct. 964.) It has been established that the law As to Plaintiff Parole Eligibility date was Change After the date of Conviction, And that the Change Significantly extended the Amount of time

Plaintiff Must Serve before before becoming Eligible for Parole reconsideration . . . Plaintiff contends, that this extension of Parole Eligibility is a disadvantage and Constitution a Violation of the Ex Post Facto Clause. Plaintiff Rely On "Akins v. Snow, And since there is no genuine issue to any Material facts in dispute Plaintiff are entitle to Summary Judgment As A Matter of law.

In fact, this Claim involves Straightforward denial of Parole Eligibility date . . . And the Change of Eligibility for Parole Reconsideration are the key facts in this Complaint. Constitution Provides that [n]o State Shall . . . Pass Any . . . Ex Post Facto Law . . . " U.S. Const. Art. 1 § 10 Cl. 1. At the time the constitution was drafted. The Phrase, "Ex Post Facto Law," Was a term of art. With A Well Established Meaning. See, Calder v. Bull, 3 U.S. [Dall] 386,1,1 Ed. 648 [1798] Identified several Legislative Acts, that clearly implicated the core concerns of the various Ex Post Facto Clause that Existed At the Time the constitution's Framing.

One such Legislative act he Noted was "Every law that change the punishment, And inflicts a Grater Punishment than the law anneled to the Crime When Committed. Id at 390, 1, L.Ed. at 650. [opinion of Chase J]. [Emphasis in Original] However, the Supreme Court rulings has been faithful to the original Principle Ex Post Facto law. That every law that change the Punishment And inflicts a Grater Punishment than the law annexed to the Crim When Committed," violate the Ex Post Facto Provision, see, Miller v. Florida, 482 U.S. 423, 429, 107 S.Ct. 2446, 2450, 96 L.Ed.2d. 351 [1987]; Weaver v. Graham, 450 U.S. 24, 28, 101 S.Ct. 960, 964, 67 L.Ed.2d 17 [1981]; Dobber v. Florida, 432 U.S. 282, 292, 97 S.Ct. 2290,

2298, 53 L.Ed.2d 344 [1977]. In fact, the Court Of Appeals 11th Circuit held, In Akins v. Snow, 922 F.2d. 1558 [1991] 3 Constitution law key 203, Pardons And Parole Key 60 Rules of the State Board's of Pardons And Paroles Concerning Parole Reconsideration Was the Equivalent of a "law" for Ex Post Facto Purposes O.C.G.A. § 42-9-45; Ga. Code § 77-525, U.S.C.A. Const. Art. 1 § 10, cls 1 And 4. Pardons And Parole "Key 60 States." Parole Reconsideration are a Essential Part of Parole Eligibility, O.C.G.A. 42-9-41; 42-9-42; 42-9-43; and (5) constitution law key 203 Ex Post Facto Clause applies to change in Parole Eligibility U.S. Ga. Const. art 1, § 10. Cl. 1, see Warden v. Marrero, 417 U.S. 653, 663, 94 S.Ct. 2532, 2538 41 L.Ed.2d. 383 [1974] [Citation omitted] The [11th Circuit] Predecessor Implied that parole Eligibility Previously Available is part of Prison sentence; By Stating any "official Po[s]t Sentence Action that delays Eligibility for Supervised Release run a foul of Ex Post Facto Proscription," United State Ex Rel Graham v. United States Parole Comm'n, 629 F.2d 1040, 1043 [5th Cir. 1980] Quoting Shepard v. Tayler, 556 F.2d, 648, 654, [2nd Cir. 1977]. Other Courts has Also held, "That Parole Eligibility is Part of sentence imposed as Punishment for a Crime, And therefore, subject to the prohibitions of the Ex Post Facto Clause; see, Fender v. Thompson, 883 F.2d. 303, 306, [4th Cir. 1989]. Retrospective Application of a Statute Changing Parole Eligibility Would Substantially Alter the consequences attached to the Crime Already Completed, And therefore, Change the punishment for prisoners Who Committed Crime before the Statute's Enactment; see, Schwartz v. Muncy, 834 F.2d. 396, 398, n.8. [4th Cir. 1987]; Beebe v. Phelps, 650 F.2d 774,

777 [5th Cir. Unit A 1981]; The Supreme Court's Recognized that prisoner is a significant factor concerning Parole Eligibility into both Defendant's decision to plea bargain and the Judge's Calculation of the Sentence to be imposed." Weaver v. Graham, Supra, at 101 S.Ct. 966, The Courts specifically Cited to Rodriguez v. United States Parole Commission, 594 F.2d 170, [7th Cir. 1979] Where the Elimination of Parole Eligibility was held to be Ex Post Facto Violation . . .

"Conclusion"

Plaintiff Contends, that he has Shown the Court's With respect, And in Good faith With Affidavit in Support that he is in fact Entitle to Summary Judgment As A Matter of law. For the violation that the State Board's of Pardons and Paroles inflicted upon him with thair decision . . .

Wherefore, For the Foregoing Reason Stated Within his Motion, And Affidavit Attached hereto in Support and the record on file herein, Plaintiff Are Entitle to Summary Judgment as a Matter of law.

Plaintiff Respectfully Pray that this Motion be granted in every respect And thus he will Every Pray . . .

Respectfully Submitted
/s/ Robert L. Jones
Robert L. Jones Pro' se
D020489

This 22 day of May 1997.

Re: Jones v. Garner, Civil Action No:1:95-CV-3012 CMA

"Affidavit"

Comes Now, Robert L. Jones Plaintiff, being fris duly Sworn and says:

(1) I am Presdent of Ware Contry, State of Georgia And Presently Serving Time At Ware State Prison, Waycross, Ga. 31501.

(2) On August 16-20, [1982] I was convicted by a Jury in the Superior Court of Fulton County State of Georgia Atlanta, Georgia, Sentence on the Same day to life Imprisonment Presiding Judge's Honorable Frank M. Eldridge.

(3) On December 21, [1995] I filed Civil Action In The United States District Court For the Northern District of Georgia, Atlanta Division Pursuant to 42 U.S.C. § 1983. In Which I sought Decletary Injuctive relief in the Alternative Punitive compensatory And Monetary Damages.

(4) When I were convicted August 20, [1982] Inmates Serving life sentence according to the rules of the State Board's of Pardons, And Paroles, And Pursuant to Akins v. Snow, Life sentance crime Committed between December 1, [1979] And Febuary 1, [1985] Parole Reconsideration Every (3) three years After the First Denial of Parole.

(5) I was considered For Parole August of (1989) And Denied September 29, (1989) with a (8) Eight year set-off until August of (1997) Which was inappropiated however, I filed an Application to intervene Akins v. Snow 922, F.2d. 1558; It was docket in Clerk's office January 3rd, (1991) No:1:88-2421. R.C.F. Robert L. Jones to intervene. As a result I was considered again August of (1992),

And denied September 29, (1992) with a three year set-off according to the applicable rules, until (1995). But, September 29, (1995) I was denied With instruction I would be consider Again (2003) (8) Eight year set-off, I Written the Board's Asking for a reconsideration thinking it was a Mistake And that Motion Was denied.

(6) This is an inappropriate decision Pursuant to Akins v. Snow, And Contrary to their own rules, and regulation. In which deprived Me of My rights under Color of State, and federal law, secured to Me by the United States Constitution. In fact, this case was remanded back to this Court for further Proceeding and Judge's Richard H. Deone reopen the case March 5, (1997) There is no genuine issues as to any material fact in dispute and the Moving Party are entitle to Summary Judgment As A Matter of law, And Pursuant to Fed. R. of Civ. P. Rule 56(c), Further, All issues have been denied Except the Ex Post Facto Claim Violation. And I rely on Akins v. Snow, 922, F.2d 1558 Cert. denied, 501 U.S. 1260, 111 S.Ct. 2915, 115 L.Ed.1079 (1991)

Wherefore, for the foregoing reason Stated in Complaint, Brief, And Affidavit I Am Entitle to Summary Judgment As A Matter of Law, because, the Application of the Board's New rules to My Case Effectively denieds Me Eligibility for Parole Consideration that I am Entitle to Under the rules Effected At the Crime was committed.

Respectfully Submitted
/s/ Robert L. Jones
Robert L. Jones
D020489

Dated: 5/22/97

DECLARATION UNDER PENALTY OF PERJURY

YOU MUST DECLARE UNDER PENALTY OF PERJURY THAT THE ANSWERS AND INFORMATION YOU HAVE GIVEN HEREIN ARE TRUE AND CORRECT. GIVING FALSE ANSWERS OR INFORMATION WILL SUBJECT YOU TO PERJURY CHARGES UNDER BOTH FEDERAL AND STATE LAW.

Understanding the above, I declare under penalty of perjury that the foregoing answers and information provided by me are true and correct.

Executed this 22 day of May, 1997.

/s/ Robert L. Jones
Signature of Declarant
D020489 Ware C. J.
3620 Harris Rd.
Waycross, Ga 31501

[Certificate Of Service Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROBERT L. JONES, Plaintiff, v. J. WAYNE GARNER, et al., Defendants.	•	CIVIL ACTION NO. NO. 1:95-cv-3012-CAM (Filed Jun. 13, 1997)

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Come now *J. WAYNE GARNER*, former Chairman, State Board of Pardons and Paroles, *JAMES T. MORRIS*, former Chairman, State Board of Pardons and Paroles, *GARFIELD HAMMONDS, JR.*, former Chairman, State Board of Pardons and Paroles, *BOBBY K. WHITWORTH*, Member, State Board of Pardons and Paroles, and *TIMOTHY E. JONES*, former Member, State Board of Pardons and Paroles, Defendants in the above-styled action, by counsel, Thurbert E. Baker, Attorney General for the State of Georgia, and submit this their Response to Plaintiff's Motion for Summary Judgment in the above-styled action. Defendants oppose Plaintiff's Motion.

I. STATEMENT OF THE CASE

Plaintiff is a convicted felon, currently incarcerated at Ware State Prison in Waycross, Georgia, in the custody of the Georgia Department of Corrections. In his lawsuit, brought against five current and former members of the

State Board of Pardons and Paroles, Plaintiff raises a single issue (it is Defendants, understanding that all remaining issues were dismissed by the Court, pursuant to 28 U.S.C. § 1915, prior to service of process).

Plaintiff alleges that the Board's decision to defer his next reconsideration for parole for a maximum of eight years, as authorized by Georgia law, violates his ex post facto rights by adversely effecting [sic] his potential for parole. Plaintiff contends that *Akins v. Snow*, 922 F. 2d 1558 (11th Cir. *cert. denied*, 501 U.S. 1260 (1991), prohibits the application of this rule to him.

Petitioner's Motion bears a certificate of service of May 22, 1997. It was mailed on June 2, 1997, and received by the Attorney General on June 4, 1997. By coincidence, the Attorney General had been contemporaneously preparing a Motion for Summary Judgment on behalf of Defendants. That Motion was filed May 27, 1997, and is currently pending before this Court.

II. STATEMENT OF FACTS

On July 23, 1974, Plaintiff was sentenced following conviction on murder charges in the Superior Court of Fulton County. Plaintiff was sentenced to life imprisonment for the murder of Jack Bell. On November 24, 1979, Plaintiff escaped. While on escape, Plaintiff killed Frances Tutt Bell. Plaintiff was convicted of her murder and sentenced to life imprisonment, again in the Superior Court of Fulton County, on August 20, 1982.

Plaintiff was initially considered for, and denied, parole on September 29, 1989. He was scheduled for

reconsideration in August, 1997. Plaintiff was considered for a second time, and denied parole, on September 1, 1992. He was scheduled for reconsideration in August, 1995. On September 29, 1995, Plaintiff was reconsidered. He was denied parole and advised that his next reconsideration would come within eight years. Plaintiff thereupon filed suit.

III. ARGUMENT AND CITATION OF AUTHORITY

A. THE "SET-OFF" OF PLAINTIFF FOR FUTURE RECONSIDERATION OF PAROLE HAS NO MEANINGFUL EFFECT ON THE POSSIBILITY OF PAROLE FOR PLAINTIFF; THEREFORE, THE APPLICATION OF THE RULE TO PLAINTIFF DOES NOT VIOLATE THE EX POST FACTO CLAUSE.

In Defendants' pending Motion for Summary Judgment, Defendants have extensively briefed this issue, which raises the scope of *Akins v. Snow*, 922 F. 2d 1558 (11th Cir.), *cert. denied*, 501 U.S. 1260 (1991), in light of the decision of the United States Supreme Court in *California Department of Corrections v. Morales*, ___ U.S. ___, 115 S.Ct. 1597 (1995). The Eleventh Circuit itself subsequently noted that the continued vitality of *Akins* was "questionable." *Jones v. Georgia Board of Pardons and Paroles*, 59 F.3d 1145, 1149 (11th Cir. 1995). In the interest of brevity, Defendants incorporate by reference that Brief in opposition to Plaintiff's Motion.

B. *AS TO PLAINTIFF'S CLAIMS FOR DAMAGES, DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY.*

Qualified immunity since the decision of the United States Supreme Court in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), has been limited to an objective inquiry into the state of the law at the time the allegedly unconstitutional actions of the defendants were taken. When a defendant has asserted the defense of qualified immunity, the complaint must be dismissed unless the plaintiff can demonstrate that the legal norms allegedly violated by the defendant were clearly established at the time he acted. *Id.*, at 818. Once the defendant has invoked the defense of qualified immunity, the burden shifts to the plaintiff to demonstrate a violation of clearly established constitutional rights. *Waldrop v. Evans*, 871 F.2d 1030 (11th Cir. 1989).

In *Lassiter v. Alabama A & M University*, 28 F.3d 1146 (11th Cir. 1994) (*en banc*), the Eleventh Circuit stated that the usual rule is that qualified immunity protects government actors and that only in exceptional cases will government actors not be shielded in cases against them in their individual capacities. *Id.*, at 1149. *Lassiter* also teaches that for the law to be clearly established to the point that qualified immunity does not apply, the law must have "earlier been developed in such a concrete and factually defined context to make it obvious to all reasonable government actors, in the defendant's place, that 'what he is doing' violates federal law." *Id.*, at 1149.

The Court went on to state that general propositions have little to do with the concept of qualified immunity

and that if the case law, in factual terms, has not staked out a bright line, qualified immunity almost always protects the defendant. *Id.*, at 1150.

> The line is not to be found in abstractions – to act reasonably, to act with probable cause, and so forth – but in studying how these abstractions have been applied in concrete circumstances. *Id.*, at 1150 (quoting *Barts v. Joyner*, 865 F.2d 1187, 1194 (11th Cir. 1989)).

Further, public officials are not obligated to be creative or imaginative in drawing analogies from previously decided cases. For qualified immunity to be surrendered, pre-existing law must dictate, that is, truly compel (not just suggest or allow or raise a question about), the conclusion for every like-situated, reasonable government agent that what defendant is doing violates federal law in the circumstances. *Id.*, at 1150. Additionally, because qualified immunity is a doctrine of practical application to real-life situations, Courts should judge the acts of the government officials against the law and facts at the time Defendants acted and not by hindsight, based on later events. *Id.*, at 1150.

In the case at bar, Plaintiff relies upon *Akins v. Snow*, 922 F. 2d 1558 (11th Cir., *cert. denied*, 501 U.S. 1260 (1991). Clearly, that case supports his claim (and, considered in isolation, would require rejection of Defendants' qualified immunity defense). However, since that decision, the United States Supreme Court has decided *California Department of Corrections v. Morales*, ___ U.S. ___, 115 S.Ct. 1597 (1995). The Eleventh Circuit itself has termed the holding in *Akins* "questionable." *Jones v. Georgia Board of Pardons and Paroles*, 59 F.3d 1145, 1149 (11th Cir. 1995).

The Fourth Circuit has, in considering a similar Virginia provision in light of *Morales*, rejected the *Akins* rationale. *Hill v. Jackson*, 64 F. 3d 163, 169-70 (4th Cir. 1995). Thus, Defendants submit that their decision cannot be said to have violated clearly established law, and they are therefore entitled to qualified immunity from suit for damages.

CONCLUSION

For the above and foregoing reasons, Defendants respectfully request that this Honorable Court deny Plaintiff's Motion for Summary Judgment, grant Defendants' Motion for Summary Judgment, and enter judgment in their favor.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROBERT L. JONES, Plaintiff,	*	
v.	*	CIVIL ACTION NO. NO. 1:95-cv-3012-CAM
J. WAYNE GARNER, et al., Defendants.	*	

DEFENDANTS' RESPONSE TO PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Come now *J. WAYNE GARNER*, former Chairman, State Board of Pardons and Paroles, *JAMES T. MORRIS*, former Chairman, State Board of Pardons and Paroles, *GARFIELD HAMMONDS, JR.*, former Chairman, State Board of Pardons and Paroles, *BOBBY K. WHITWORTH*, Member, State Board of Pardons and Paroles, and *TIMOTHY E. JONES*, former Member, State Board of Pardons and Paroles, Defendants in the above-styled action, by counsel, Thurbert E. Baker, Attorney General for the State of Georgia, and submit this their Response to Plaintiff's Statement of Undisputed Material Facts in Support of Plaintiff's Motion for Summary Judgment.

Plaintiff has not submitted a Statement of Undisputed Material Facts to which Defendants could respond.

Respectfully submitted,

THURBERT E. BAKER 033887
Attorney General

MARY BETH WESTMORELAND 750150
Deputy Attorney General

/s/ Carol A. Callaway by NBC
CAROL A. CALLAWAY 104590
Senior Assistant Attorney General

/s/ Neal B. Childers
NEAL B. CHILDERS 124410
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In The United States District Court
For The Northern District Of Georgia
Atlanta Division

Robert L. Jones,	)	
	)	
Plaintiff,	)	Civil Action No:
-vs-	)	1:95-Cv-3012-C.M.A
J. Wayne Garner, ET al,	)	
	)	
Defendant's	)	

Plaintiff's Response To Defendant's
Motion For Summary Judgment

Comes Now Robert L. Jones A Proise Plaintiff In the above-style Action, And Submits his response to the Defendant's Motion For Summary Judgment In the above-style Action. Plaintiff Oppose Defendant's Motion For Summary Judgment, And States the Following To-Wit:

In Defendant's "Statement of Facts," No. 1, AN 2 He Would Admitt Too;

However, No. 3, P. 4 Defendant's agree, that the "Set-off" Of Plaintiff For Furture Reconsideration For Parole has No Meaningful Effect on the Possibility of Parole for Plaintiff appreciation of the rules to Plaintiff does not Violate the Expost Facto Clause.

Plaintiff Contends, that the Defendant's Must have had Over Looked the case "Calder V. Bull" When he Cited "Morales". The Constitution provides that "[n]o state shall . . . Pass any . . . Expost Facto Law . . . " U.S. Const.

Art. 1. § 10, cl.1. at the time the Constitution was drafted, the Phrass "Expost Facto" Was a Term of art With a Well-Established Meaning. SEE Calder V. Bull, 3 U.S. [Dall] 386, 1 L.Ed. 648 [1798]. Justice Chase's Opinion In Calder V. Bull 3 U.S. [Dall] 386, 1 L.Ed. 648, [1798]. Identified Several Legisintive Acts that clearly Implicated the core concerns of the Various Expost Facto Clauses That Existed at the time of the Constitutions Framing, ONE Such Legislative Act he Noted Was: "Every Law That Changes The Punishment, and Inflicts a greater punishment, than the Law Annexed to the Crime When Committed." Id. at 390.1 L.Ed. at 650, [opinion] of Chase J.] [Emphasis in original] The Supreme Courts Expost Facto rulings has been Faithful to the Original principle that, "Every Law that Changes the Punishment, and Inflicts a Grater Punishment than the Law Annexed to the Crime When Committed," Violates the Expost Facto Provision. SEE, Miller V. Florida, 482, U.S. 423, 429, 107 S.Ct. 2446, 2450, 96, L.Ed.2d. 351. [1987]; Weaver V. Graham, 450 U.S. 24, 28, 101, Sct. 960, 964, 67, L.Ed.2d. 17, [1981]; Dabbert V. Florida, 432 U.S. 282, 292, 97 S.Ct. 2290, 2298, 53 L.Ed.2d 344 [1977]; Etc. In Fact, Morales Case Is Misplaced To Case at Bar, In Cal! Fornia V. Morales Dept of Corrections, U.S. 115 Sct. 1597, 131 L.Ed.2d. 588, [1995] This case is wholely Indistinguishable from the Legislation of the Issue at Bar. California has a Suitability parole parole status, Georgia dose not . . . California Parole Statues. § 3041.5.[6][2], Cal. Penal. Code, Ann. § [190 West. 1982] In which this Amendment is Left Unchanged. Of the Substantive formula for securing and reduction to the sentencing raining. In fact this decision was handed down In Morales Case, during the pendency of his case,

In which Respondent Appealed before the Board for his Suitability Hearing, and the Board found that Morales Was Unsuitable for "1992" Parole, and gave him a Set-off until "1995" Just (3) three years. SEE, In Morales Case, Post at. 1607, 1608, states As follows:

We express no view as to the Constitution-ality of any of a Members of other statutes that Might Alter the timing of parole hearing, the Circumstances difference from those present here. Pursuant to Cal. Penal, Code ANN. § 3041, 5, [6][2] West [1992]; Title 15, Cal. Code of regulation § 2050 [1994] this Case is Misplaced according to Akins V. Snow, 922, F.2d. 1558 [11th Cir.1991] 3 Constitution Law KEY 203; Pardons And Parole KEY 60 Rules of State Board of Pardon And Parole. Concerning Parole Reconsideration was the equivalent of a "Law" for Expost Facto purposes.

The Conclusion that a Parole Reconsideration hearing Is An Essential part of parole Eligibility under Georgias' parole System Is Supported by the Language of the statuts delegating to the Board the Power to Enact Rules, and Regulations Concerning Parole.

This statute provides that [s]uch rules and regulations shall contain as eligibility requirement for parole which shall set forth the time when the Automatic Initial Consideration of Inmates . . . Shall take place." Ga. Code ANN. § 77-525 Harrison 1969] SEE, also, Ga. Code ANN. § 42-9-45.

Further, In Defendants' Motion for Summary Judgment, on Page(6) Defendants' are Trying to mislead the Courts, with alleging allegations that cannot be Supported by the

records "Quote," In Plaintiff's case. He has been convicted of Multiple Capital Felonies [Tow Courts of Murder] In Georgia, Including ONE Murder Committed after having Escaps from custody, "Unqote". Plaintiff Contends there is Nothing in the records which Will support Such Statements, there is No where in the record that Plaintiff has been Convicted for an escape, Howere Plaintiff Went to Court for an Escape in Birmingham, Ala, (11) years before He ever entered Georgia and was found Not Guilty. Further Defendants' Lied about Plaintiff having a Significant history of Violance, In Fact Nothing Could be No Further From the Truth. In Fact, if the aligations Made by the Defendants' Was So; Than why are the Exhibits Not Attached to their Motion? The only Exhibit Attached was an Affadivit by Williams F. Amideo, "And the denial of the Plaintiffs' Parole, And the State Board Of Pardons And Paroles" Board Policy Statement. In Fact, Plaintiff has Never had access to these Polices.

However, these Polices Was Not Changed Until Michael J. Bowers, Attorney General, Assistant, Attorney General," Terry L. Long; Addressed A Letter May 16, 1995, to Mr. Christopher Hamilton, Director, Legal Services. State Board Of Pardons And Parole, RE; To California Department of Correction V. Morales, U.S. Supreme Court Decision. In Which Mr. Long Stated in his letter, page (2) pargraph (3), Stated the Morales decision attempts to Limit its holding to the facts of the Case. Was Worth Nothing . . . Further, Mr. Long stated that an Eight year Set-off Could Not Legally be distinqushed from the Law under Consideration In Morales . . . Thereafter, J. Wayne Garner; Chairman of the State Board of Pardons And Parole. June 12, 1995. Addressed to the Board . . . Thru:

Charles J. Topetzes; From: Wayne Daniel.. RE: Lifer Reconsideration Intervals Morales Decision. Recommending, that all the Members adopt a uniform Potential Set-off Maximun of (8) years in all Cases); (Including Initial Consideration, and Reconsideration) And for the policy to become Effective Immediately, In fact, all Members agree to a policy of a Set-off period of one to eight years In all Life Sentence Cases.

SEE Attached hereto, a two page Letter; to Mr. Christopher Hamilton, as (exhibit-A) also SEE (Exhibit-b) a Letter From Wayne Daniel. To the Boards' and (Exhibit-C) the Policy Attached hereto, hereby.

Plaintiff Contends, that the Court Can plainly See the disrespected that the State Boards of Pardons and Paroles has for the "Law" In Which the Georgia Legisiature has delegated to the Board the Authority to Enact "Rules and Regulations" Concerning Parole. Ga. Code ANN § 77-525, [Harrison 1969]; Ga. Code ANN § 42-9-45 [1989]. However This delegation Mandates that the Boards' rules and regulations "Contained an Eligibility requirement, and since the Boards' have this power, the rules, or regulation Enacted by the Board are subject to the Expost Facto Clause's; Prohibitions, Defendants', are trying to Mislead the Courts Conclusively Knowing that they All Named Defendants' Were Violating Constitutions Laws of Pardon and Parole. [Key 60], And the rules of State Board of Pardons, And Paroles Concerning Parole Reconsideration Was the Equivalent of a "Law" for Expost Facto purposes.

O.C.G.A. § 42-9-45; Ga. Code, § 77-525; U.S.C.A. Const. Art. 1, § 10, Cl.1, In fact, Constitution [Law Key 60] States

as follows: Parole Reconsideration hearing are essential part of Parole Eligibility. O.C.G.A. §§ 42-9-41; 42-9-42; 42-9-43 and Constitutional [Law Key 203] Ex-Post Facto Clause applies to Change In Parole Eligibility, U.S.C.A. Const. art. 7, § 10, Cl.1, And to Applie this Law retrospective Court Must Look to date Where Crime Was Committed, And this Enactment put the Plaintiff at a-Grate disadvantage; And this "Deprivation of All Opportunity to be released on Parole . . . Comes Within the Scope of [the] Clause" The Key Factor In This Case Is The Change In The Eligibility date. Is the Eligibility date for Parole Consideration protected by Expost Facto Prohibition? The Ruling of this Circuit of other Circuits and of Supreme Court Answer in the Affirmative.

In Conclusion

According to Defendants' Motion for Summary Judgment; there is no Expost Facto Prohibition Against Retrospective Changes In a Prisoner's Eligibility date. Conceivably, the Board Could at any time Amend it's rules to require a Life Sentence Inmate To Serve (50) Fifty years without Consideration, And Apply this rule to all Inmates Serving Life Sentence.

Indeed, the Board Could, at whim, Length to the Extend of Effectively Voiding, All Prisoners' Eligibility dates, "Like they are doing" Without Running Afoul of the Expost Facto Prohibition . . .

Wherefore, for the foregoing reason stated Within the Plaintiff's response to Defendant's Motion for Summary Judgment, Accordingly, Plaintiff Respectfully Prays that this Honorable Court apple the Correct Law to this Issue,

And deny Defendant's Motion for Summary Judgment. And Enter Judgment In Plaintiff's. For Plaintiff is entitled To Judgment In His Favor as a Matter of Law, And thus, He Will Ever Pray . . .

Dated this 3rd Day of July 1997

Respectfully Submitted
/s/ Robert L. Jones
Plaintiff,

c/c

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475-3-.05 Parole Consideration. Amended.

(1) Consideration is automatic for all offenders serving sentences imposed by a court of this State and who are in the custody of the Department of Offender Rehabilitation. No application is required. Inmates serving misdemeanor county sentences of sufficient duration to make them meet the time-served requirements of Rule 475-3-.06(1) will be considered upon submission of a request to the Board. The request may be in any written form and must contain name under which convicted, where incarcerated, offense(s), date and court of conviction, and length of sentence(s). The request should be submitted as early as possible to allow enough time for necessary investigations.

(2) Reconsideration of those inmates who have been denied parole shall take place at least every three years. The Board will inform inmates denied parole of the reasons for such denial without disclosing confidential sources of information or possibly discouraging diagnostic opinions.

(3) Inmates who have escaped will not be considered for parole until their return to custody of penal authorities of this State. If initial parole consideration was given prior to the escape, the next consideration will be scheduled for one to three years after recapture.

(4) A person who is returned to prison because of violation of the conditions of parole or other conditional release will be scheduled for parole consideration one to three years after revocation unless the Board directs otherwise in its order of revocation, votes to consider the case earlier, or unless a new sentence supersedes the

revoked sentence for the purpose of computing parole eligibility.

(5) When considering a case for parole, the Board will apply Parole Decision Guidelines. The Guidelines will take into account the inmate's crime severity level and his likelihood of success on parole. Parole success factors significantly associated with successful parolees will be tabulated from the inmate's criminal and social history. A third element for consideration will be the inmate's behavior in prison. The Board will follow the Guidelines in all parole cases except life-sentence cases to arrive at its decision or, for a specific and stated reason, may depart from the Guidelines. After the Board notifies the inmate of the decision, he may appeal the decision, but he must do so within 30 days. The basis for an appeal must be limited to the assessment of the crime severity level or to the computation of the parole success likelihood score. The inmate should address his appeal to the Appeals Officer in the Board's central office.

Authority Ga. L. 1943, pp. 185, 194: Ga. L. 1964, pp. 487-489. **Administrative History.** Original Rule entitled "Parole Consideration" was filed and effective on January 7, 1970. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed October 8, 1971: effective October 28, 1971. **Amended:** Filed January 20, 1972: effective February 9, 1972. **Amended:** Filed January 8, 1974; effective January 28, 1974. **Amended:** Filed June 30, 1976: effective July 20, 1976. **Amended:** Filed March 15, 1979; effective April 4, 1979. **Amended:** Filed November 8, 1979; effective December 1, 1979, as specified by the Agency.

475-3-.05 Parole Consideration. Amended.

(1) Consideration is automatic for all offenders serving sentences imposed by a court of this State and who are in the custody of the Department of Corrections, **except that no parole consideration shall ever be given to offenders serving sentences of life imprisonment without parole.** No application is required. Persons ordered to serve consecutive county misdemeanor confinement sentences exceeding 12 months must request consideration. The request may be in any written form and must contain name under which convicted, where incarcerated, offense(s), date and court of conviction, and length of sentence(s). The request should be submitted as early as possible to allow enough time for necessary investigations.

(2) Reconsideration of those inmates serving life sentences who have been denied parole shall take place at least every eight years. The Board will inform inmates denied parole of the reasons for such denial without disclosing confidential sources of information or possible discouraging diagnostic opinions.

(3) Inmates who have escaped will not be considered for parole until their return to custody of penal authorities of this State. If initial parole consideration was given prior to the escape of a life sentence inmate, the next consideration will be scheduled for one to eight years after recapture.

(4) A person who is returned to prison because of violation of the conditions of parole or other conditional release will be scheduled for parole consideration six months to one year after revocation unless the Board

directs otherwise in its order of revocation, votes to consider the case earlier, or unless a new sentence supersedes the revoked sentence for the purpose of computing parole eligibility.

(5) In considering parole for persons who will becomes statutorily eligible for parole consideration and who are serving less than a life sentence, the Board shall review a recommendation as to months to serve. This recommendation will be obtained from the Parole Decision Guidelines system which accounts for the severity of the crime and the inmate's likelihood of success on parole. The inmate's likelihood of success on parole is measured by weighted factors concerning the inmate's criminal and social history which the Board has found to have value in predicting the probability of further criminal behavior and successful adjustment under parole supervision. The Parole Decision Guidelines system is an aid to the Board in making more consistent, soundly based and explainable parole decisions and does not create a liberty interest. The Board specifically reserves the right to exercise its discretion under Georgia Law to disagree with the recommendation resulting from application of the Parole Decision Guidelines and may make an independent decision to deny parole or establish a Tentative Parole Month at any time prior to sentence expiration. After the Board notifies the inmate of their decision, the inmate may contest either the Crime Severity Level or Parole Success Factor scores by writing within 30 days the Parole Guidelines Director in the Board's Central Office. Prior to an inmate being paroled the inmate's institutional conduct will be reviewed and institutional misconduct may result in a delay in parole

release or a decision to deny parole. Any decision rendered under the Parole Decision Guidelines may be changed at the discretion of the Board at any time. The Board may modify any part of the Parole Decision Guidelines system at any time.

Authority Ga. L. 1943, pp. 185, 194; Ga. L. 1964, pp. 487-498; Ga. L. 1983, pp. 523-524; Ga. L. 1993, pp. 1654-1660. History, Original Rule entitled "Parole Consideration" was filed and effective on January 7, 1970. Amended: Rule repealed and a new Rule of same title adopted. Filed October 8, 1971; effective October 28, 1971. Amended: Filed January 20, 1972; effective February 9, 1972. Amended: Filed January 8, 1974; effective January 28, 1974. Amended: Filed June 30, 1976; effective July 20, 1976. Amended: Filed March 15, 1979; effective April 4, 1979. Amended: Filed November 8, 1979; effective December 1, 1979, as specified by the Agency. Amended: Rule repealed and a new Rule of same title adopted. Filed November 21, 1983; effective December 11, 1983. Amended: Filed January 7, 1985; effective February 1, 1985, as specified by the Agency. Amended: Filed April 29, 1985; effective May 19, 1985. Amended: F. Aug. 23, 1993; eff. Sept. 12, 1993.
